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MANUAL

FOR THE USE OF THE

BOARDS OF HEALTH

AND

OVERSEERS OF THE POOR

OF

MASSACHUSETTS.

CONTAINING THE STATUTES RELATING TO HEALTH, LUNACY, AND PUBLIC CHARITY, AND CERTAIN DECISIONS OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS RELATING TO THE SAME.

PREPARED BY DIRECTION OF THE

STATE BOARD OF HEALTH, LUNACY, AND CHARITY.

JUNE, 1882.

BOSTON:
Rand, Avery, & Co., Printers to the Commonwealth,
117 Franklin Street.
1882.

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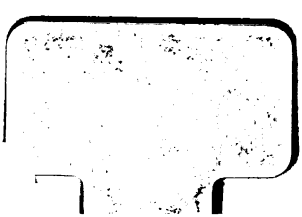

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INTRODUCTION.

THE State Board of Health, Lunacy, and Charity, established in May, 1879, takes the place of two long existing Boards, — the State Board of Health, created in 1869, and the Board of State Charities, created in 1863 to succeed the Alien Commission, which had been established in 1852. The duties of a Lunacy Commission, now performed by the new Board, had been in part assigned to the Board of Charities since 1864, and in part performed by a special commission appointed in 1874 for one year.

The Massachusetts Board of State Charities consisted of seven members, and was the oldest organization of the kind in the United States. It was created by chapter 240, Acts of 1863, and organized on the 7th of October in that year, with Otis Norcross of Boston as Chairman, Dr. H. B. Wheelwright of Taunton as General Agent, and F. B. Sanborn of Concord as Secretary. Mr. Norcross resigned his place on the Board in September of the following year, and Dr. Nathan Allen of Lowell was chosen as his successor in the chairmanship, retaining the position till October, 1865, when Dr. Samuel G. Howe of Boston was elected. Dr. Howe was Chairman by successive annual elections till October, 1874, when he declined further service. Moses Kimball of Boston was elected to the position, but declined to accept it, and thereupon F. B. Sanborn was chosen Chairman. He retired in September, 1876, and was succeeded by Edward Earle of Worcester, who died in May, 1877. Dr. Allen was then re-elected Chairman, and served in that capacity till the Board ceased to exist June 30, 1879.

The first General Agent of the Board of Charities was Dr. Wheelwright, then of Taunton, who had been Chairman of the Alien Commission from 1858 to 1863. He acted as General Agent of the Board till October, 1868, when he retired, and Stephen C. Wrightington of Fall River was appointed to the position, which he retained until the office ceased to exist, when he became Superintendent of In-door Poor under the present Board. Dr. Wheelwright, from 1869 to July, 1879, was Agent for the Sick State

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Poor, and is now Superintendent of Out-door Poor under the present Board. Mr. Sanborn remained Secretary of the Board of Charities until October, 1868, when he resigned, and was succeeded by Julius L. Clarke of Newton who resigned in 1869. Edward L. Pierce of Milton was then appointed, and remained in office till March, 1874. During the absence of Mr. Pierce in Europe, from May to November, 1873, and after his resignation, Mr. Sanborn was chosen Acting Secretary, and held the place until Sidney Andrews of Brookline, having been appointed as Mr. Pierce's successor in May, 1874, took charge of the office in July of the same year. Mr. Andrews continued Secretary untill the Board was abolished in June, 1879. The Visiting Agent of the Board from 1866 to 1869 was Gordon M. Fisk of Palmer, and from 1869 to July, 1879, Gardiner Tufts of Lynn. The office was then abolished, and its duties imposed upon the new Board.

The State Board of Health was established June 21, 1869, and the seven members of the Board were appointed July 31, 1869. The first meeting was held Sept. 15, 1869. At a subsequent meeting, Sept. 22, the organization was completed by the choice of Dr. H. I. Bowditch as Chairman, and Dr. George Derby as Secretary. Dr. Derby died June 20, 1874. Dr. F. W. Draper was elected Secretary *pro tempore* June 22, 1874, and served until Sept. 2, 1874, when he was succeeded by Dr. C. F. Folsom, who was the first Secretary of the present Board. He was succeeded in 1881 by Mr. C. F. Donnelly, who is now Secretary.

The State Board of Health, Lunacy, and Charity first met for organization in June, 1879, and entered fully upon its duties July 1, 1879. Its present members, committees, and officers will be found printed by name on page 6. Its By-Laws are given at the end of the Statutes and Decisions in this Manual, where also will be found a fuller statement of the duties of such committees and officers, and certain instructions and blank forms used in the transaction of business by the Board and its Departments.

The first Chairman of the present Board was Hon. Moses Kimball of Boston, who resigned Oct. 27,1880, and was succeeded by the present Chairman. The first Secretary of the present Board, Dr. Folsom, performed for a year the duties of Health Officer; after which for six months he was Secretary without other duties; in January, 1881, he resigned and was succeeded as Secretary by Mr. C. F. Donnelly of Boston; in whose occasional absence the duties of Secretary have been performed by Dr. Ezra Parmenter of Cambridge. Dr. H. P. Walcott of Cambridge entered upon his duties as Health Officer, July 1, 1880. The other Department officers have served since July 1, 1879.

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In regard to the statutes here printed, it may be said that the Health Laws have been compiled by Mr. George F. Piper according to a method approved by the Health Committee, but somewhat different from that adopted by the Committees on Lunacy and on Charities. In the Health Department the decisions are referred to in immediate connection with the clauses to which they relate; while in the Lunacy and Charity Departments it has been found more convenient to cite the decisions and opinions relating to one subject in a body by themselves. For a like reason, the formal titles of the Health sections of the statutes are omitted, while they are inserted before the other statutes. The laws passed in 1882 appear by themselves after the citations from the Public Statutes of 1881, relating to each subject.

In respect to the decisions of the Supreme Court cited in this Manual, it is to be noticed that they are binding as interpretations of the law, while the *opinions* of law-officers cited may be equally good interpretations, but have no binding force until they have been affirmed by the courts.

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MEMBERS, COMMITTEES, AND OFFICERS

OF THE

State Board of Health, Lunacy, and Charity,

JULY, 1882.

THOMAS TALBOT, *Chairman*	North Billerica.
CHARLES F. DONNELLY, *Secretary* . .	Boston.
R. T. DAVIS, M.D.	Fall River.
EZRA PARMENTER, M.D.	East Cambridge.
EDWARD HITCHCOCK, M D.	Amherst.
CLARA T. LEONARD	Springfield.
GEORGE P. CARTER.	Cambridgeport.
ALFRED HOSMER, M.D.	Watertown.
JOHN C. HOADLEY	Lawrence.

COMMITTEES OF THE BOARD.

On Health. — Dr. Hosmer, Mr. Talbot, Dr. Davis, Mr. Hoadley, and Mr. Carter.

On Lunacy. — Dr. Hitchcock, Dr. Hosmer, Dr. Parmenter, and Mrs. Leonard.

On Charities. — Dr. Parmenter, Mr. Donnelly, Mr. Hoadley, Mr. Carter, and Mrs. Leonard.

DEPARTMENT OFFICERS.

Health Officer; Henry P. Walcott, M.D., Cambridge.
Inspector of Charities, F. B. Sanborn, Concord.
Superintendent of In-Door Poor, S. C. Wrightington, Fall River.
Superintendent of Out-Door Poor, Henry B. Wheelwright, Newburyport.

The Offices of the Board are at the State House, Boston.

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PART FIRST.

THE HEALTH LAWS.

STATE BOARD.

1. The state board of health, lunacy, and charity shall consist of nine persons. The present members thereof shall continue to hold their offices during the terms for which they were appointed. Two members of the board shall retire each year, in the order of their appointment, except every fifth year, when one shall retire. The appointments or re-appointments to fill vacancies occurring from expiration of terms of office shall be for five years; and all vacancies which may occur from that cause or otherwise shall be filled by the governor, with the advice and consent of the council. Public Statutes, c. 79, § 1.

The state board of health, lunacy, and charity was originally established by chap. 291, Acts of 1879.

2. The state board of health, lunacy, and charity shall take cognizance of the interests of health and life among the citizens of the commonwealth. It shall make sanitary investigations and inquiries in respect to the causes of disease, and especially of epidemics and the sources of mortality and the effects of localities, employments, conditions, and circumstances, on the public health; and shall gather such information in respect to those matters as it may deem proper for diffusion among the people. It shall advise the government in regard to the location of any public institutions. Certain general powers and duties of the state board of health, lunacy, and charity. Public Statutes, c. 80, § 1.

The state board of health was originally established by chap. 420, Acts of 1869.

Its powers were subsequently enlarged by chap. 167, Acts 1871, and chap. 183, Acts 1878.

By chap. 291, Acts 1879, it was abolished, and its powers transferred to the state board of health, lunacy, and charity.

3. If small-pox or any other contagious or infectious disease dangerous to the public health exists, or is likely to exist, in any place within the state, the state board shall investigate the same, and the means of preventing the spread thereof, and shall consult Further duties in case of contagious diseases. Public Statutes, c. 80, § 2.

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thereon with the local authorities, and shall have co-ordinate powers as a board of health, in every place, with the board of health or health officer thereof, or with the mayor and aldermen or the selectmen, if no such board or officer exists in such place.

TOWN AND CITY BOARDS OF HEALTH.

Towns may choose board of health, etc., or selectmen, to act. Public Statutes, c. 80, § 3.

4. A town, respecting which no provision is made by special law for choosing a board of health, may, at its annual meeting or at a meeting legally warned for the purpose, choose a board of health by ballot, to consist of not less than three nor more than nine persons; or may choose a health officer. If no such board or officer is chosen, the selectmen shall be the board of health.

City council may appoint such board; or shall itself act. Public Statutes, c. 80, § 4.

5. Except where different provision is made by law, the city council of a city may appoint a board of health; may constitute either branch of such council, or a joint or separate committee of their body, a board of health, either for general or special purposes; and may prescribe the manner in which the powers and duties of the board shall be exercised and carried into effect. In default of the appointment of a board with full powers, the city council shall have the powers and perform the duties prescribed to boards of health in towns.

Where, by an ordinance of a city, two members of the board of mayor and aldermen, and three members of the common council, were constituted the board of health, and no provision as to the mode of appointment was made by the ordinance, or by the joint rules and orders of the city council, but the orders of each branch provided that all committees should be appointed by the mayor and the president of the common council respectively, it was held that the members of the joint committee, constituted by the ordinance a board of health, were duly appointed by the presiding officers of each branch, and that the board so constituted and appointed was legally organized.

Taunton *v.* Taylor, 116 Mass. 254.

Where the city council constitutes the board of health, the power to make regulations as it judges necessary for the public health and safety respecting nuisances, sources of filth, and causes of sickness, may as well be exercised by an ordinance as by any other form of regulation.

Commonwealth *v.* Patch, 97 Mass. 224.

In default of the appointment of a board of health, and where the city council constitutes the board of health, an ordinance which prohibits the keeping or maintaining swine within certain districts of the city, under a penalty not exceeding twenty dollars for each offence, is valid as a health regulation.

Commonwealth *v.* Patch, 97 Mass. 221.

It is a matter of considerable doubt whether the prohibition of offensive trades is the proper subject of an ordinance or by-law, because that matter is specially provided for by statute, and to prohibit their exercise in any particular locality in a town or city by a by-law or ordinance would interfere with the right of appeal to a jury which the statutes secure.

Commonwealth *v.* Patch, 97 Mass. 223.

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6. Every such board of health may appoint a physician to the board, who shall hold his office during its pleasure. Board may appoint physician. Public Statutes, c. 80, § 5.

7. Such board shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of persons employed by it in the execution of the health laws and of its own regulations. Compensation of physician, etc. Public Statutes, c. 80, § 6.

8. Present members of boards of health of cities by appointment under chapter one hundred and thirty-three of the statutes of the year eighteen hundred and seventy-seven, shall continue to hold office during the terms for which they were appointed, unless sooner removed as provided by law. Present members of city boards of health under St. 1877, 133, to remain in office. Public Statutes, c. 80, § 7.

9. In each city, except Boston, in which a majority of the voters shall have so voted according to law, there shall be a board of health, consisting of the city physician, and two persons, not members of the city council, appointed by the mayor and aldermen. The term of office of the appointed members shall be two years, and one of them shall retire from office on the first Monday of February in each year. If such board is not already in existence, the mayor and aldermen shall in January next after the vote of the city authorizing such board appoint two members, one for one year, and the other for two years; and the board shall enter on its duties on the first Monday of February after such appointment. All vacancies occurring in boards already in existence or in those hereafter constituted shall be filled by the mayor with the approval of the board of aldermen. Each member so appointed shall be subject to removal by the mayor for cause, and shall receive such compensation as the city council may from time to time determine. Boards of health to be appointed in cities, when. Term of office, removal, etc. Public Statutes, c. 80, § 8.

10. Such boards shall organize annually by the choice of one of their number as chairman; they may also choose a clerk, not a member of the board, and make such rules and regulations for their own government and for the government of all subordinate officers in their department as they may deem expedient. how to be organized. Public Statutes, c. 80, § 9.

11. Such boards may exercise all the powers vested in, and shall perform all the duties prescribed to, city councils or mayors and aldermen as boards of health, under the statutes and ordinances in force in their respective cities on the seventeenth day of May in the year eighteen hundred and seventy-seven; and may appoint such subordinate officers, agents, and assistants as they may deem necessary, and may fix their compensation and that of their clerk; but the whole amount of such compensation shall not exceed the sum appropriated therefor by the city council. powers and duties. Public Statutes, c. 80, § 10.

12. In each city such board of health shall annually, in January, present to the city council a report made up to and including the thirty-first day of the preceding December, and containing a full to make annual reports. Public Statutes, c. 80, § 11.

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and comprehensive statement of its acts during the year, and a review of the sanitary condition of the city; it shall also, when the city council or the standing committee thereof on finance so requires, send to the auditor of accounts an estimate in detail of the appropriations required by its department during the next financial year.

Boards of health may enforce regulations as to house drainage. Public Statutes, c. 80, § 12.

13. Such boards may prepare and enforce in their respective cities such regulations as they may deem necessary for the safety and health of the people, with reference to house drainage and its connection with public sewers, where a public sewer abuts the estate to be drained.

Cities to vote on acceptance of five preceding sections, when. Public Statutes, c. 80, § 13.

14. If at any time a city has not voted to accept the five preceding sections, or chapter one hundred and thirty-three of the statutes of the year eighteen hundred and seventy-seven, and fifty voters residing therein present a written request to that effect thirty days prior to any meeting for the election of city officers therein, the mayor and aldermen shall notify and warn the legal voters thereof to vote upon the acceptance of said sections at such election.

In case of epidemic, etc., boards of health may be appointed in cities not accepting, etc. Public Statutes, c. 80, § 14.

15. In case of a severe epidemic, or other danger to the public health, the mayor and aldermen of the city where there is no board of health may, upon the request of one hundred voters residing therein, appoint such a board to act during the emergency, with the powers and duties of a board of health duly appointed under section eight. [Chapter 80, Public Statutes.]

City physician, how appointed, when ex officio a member of board; how removed. Public Statutes, c. 80, § 15.

16. In cities where the city physician is ex officio a member of the board of health, he shall be appointed by the mayor, with the approval of the board of aldermen, for a term of three years, subject to removal, for cause, by the same authority.

Board of health may appoint agents, etc. Public Statutes, c. 80, § 16.

17. The board of health in a city or town may appoint an agent or agents to act for it in cases of emergency, or when it cannot be conveniently assembled; and such agent so appointed shall have all the authority which the board appointing him had; but he shall, within two days, report his action in each case to it for its approval, and shall be directly responsible to it and under its control and direction. An agent appointed to make sanitary inspections may make complaint in cases of violation of any law, ordinance, or by-law relating to the public health in a city or town.

to retain charge of a case, after acting therein. Public Statutes, c. 80, § 17.

18. The board of health of a city or town shall retain charge of any case arising under the provisions of this chapter in which it shall have acted, to the exclusion of the overseers of the poor.

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NUISANCES, CONTAGION, ETC.

Board of health to make regulations respecting nuisances, etc. Public Statutes, c. 80, § 18.

19. The board of health of a town shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth, and causes of sickness, within its town, or on board of vessels within the harbor of such town, and respecting articles which are capable of containing or conveying infection or contagion, or of creating sickness, brought into or conveyed from its town, or into or from any vessel. Whoever violates any such regulation shall forfeit a sum not exceeding one hundred dollars.

The keeping of swine may be prohibited as a sanitary regulation. The prohibition may apply to the entire town or city, or only to a part of the town or city, if that part is so situated as to require peculiar and exceptional provisions.

Commonwealth *v.* Patch, 97 Mass. 221.

A regulation that no person shall remove, cart, or carry through any of the streets, lanes, or alleys of a city, any house-dirt, refuse, offal, filth, or animal or vegetable substance from any of the dwelling-houses or other places occupied by the inhabitants, in any cart, wagon, truck, hand-cart, or other vehicle, unless such person so removing, together with the cart, shall be duly licensed for that employment and purpose by the mayor and aldermen, upon such terms and conditions as they shall deem the health, comfort, convenience, or interest of the city require, on pain of forfeiting a sum not less than three dollars nor more than twenty, is valid.

Henry Vandine, petitioner, 6 Pickering, 187.

to give notice of regulations. Public Statutes, c. 80, § 19.

20. The board shall give notice of all regulations made by it by publishing the same in some newspaper of its town, or, where there is no such newspaper, by posting them up in some public place in the town. Such notice shall be deemed legal notice to all persons.

Notice must be given of general regulations prescribed by the board, before parties can be held in fault for a disregard of their requirements. But although such general regulations may seriously interfere with the enjoyment of private property, and disturb the exercise of valuable private rights, no previous notice to parties so to be affected by them is necessary to their validity. They belong to that class of police regulations to which all individual rights of property are held subject, whether established directly by enactments of the legislative power, or by its authority through boards of local administration.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 443.

to examine into and abate nuisances, etc. Public Statutes, c. 80, § 20.

21. The board shall examine into all nuisances, sources of filth, and causes of sickness, within its town, or in any vessel within the harbor of such town, that may in its opinion be injurious to the health of the inhabitants, and shall destroy, remove, or prevent the same as the case may require.

to order certain nuisances, etc., abated by owner.

22. The board or the health officer shall order the owner or occupant at his own expense to remove any nuisance, source of

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Public Statutes, c. 80, § 21.

filth, or cause of sickness, found on private property, within twenty-four hours, or such other time as it deems reasonable, after notice served as provided in the following section; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof.

The board may order the removal of a nuisance without previous notice to the owner or occupant, and without any opportunity by him to be heard.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 443.

In the above case, Wells, J., says, in relation to boards of health, "Their action is intended to be prompt and summary. They are clothed with extraordinary powers for the protection of the community from noxious influences affecting life and health, and it is important that their proceedings should be embarrassed and delayed as little as possible by the necessary observance of formalities. Although notice and opportunity to be heard upon matters affecting private interests ought always to be given when practicable, yet the nature and object of those proceedings are such that it is deemed to be most for the general good that such notice should not be essential to the right of the board to act for the public safety. Delay for the purpose of giving notice, involving the necessity either of public notice or of inquiry to ascertain who are the parties whose interests will be affected, and further delay for such hearings as the parties may think necessary for the protection of their interests, might defeat all beneficial results from an attempt to exercise the powers conferred upon boards of health. The necessity of the case and the importance of the public interests at stake justify the omission of notice to the individual."

The adjudication of the board that a nuisance exists is conclusive, and no appeal lies therefrom.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 449.

The board should keep an accurate record of their proceedings, and all adjudications should appear therein in clear and distinct language.

Order for abatement, how served. Public Statutes, c. 80, § 22.

23. Such order shall be made in writing, and served by any person competent to serve a notice in a civil suit, personally on the owner, occupant, or his authorized agent; or a copy of the order may be left at the last and usual place of abode of the owner, occupant, or agent, if he is known and within the state. But if the premises are unoccupied and the residence of the owner or agent is unknown or without the state, the notice may be served by posting the same on the premises and advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

The manifest purpose of this provision is to enable the owner or occupant to remedy the evil in the mode least detrimental or offensive to himself, and thus secure himself and his premises from the intrusion of the agents of the board of health.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 444.

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The order addressed to a person directing him to remove a nuisance should describe the nature and locality of the nuisance.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 444.

It is not the purpose of the order to direct in what mode the person should proceed to remove the nuisance.

It should direct the end to be accomplished, leaving the party to adopt any effectual mode which he may choose.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 444.

An order of a board of health, reciting that a railroad company, by filling up parts of a mill-pond in Salem, without supplying suitable and safe culverts, sluiceways, trenches, and other means of drainage, have created and are maintaining a nuisance at said pond, which is dangerous to the public health, and a cause of sickness to the inhabitants, and requiring the company to remove said nuisance and cause of sickness within seven days after service of notice of the order, sufficiently informs the company of the nature and locality of the nuisance.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 431.

Owner not complying, board to remove nuisance at his expense. Public Statutes, c. 80, § 23.

24. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth, or cause of sickness, to be removed, and all expenses incurred thereby shall be paid by the owner, occupant, or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

If the owner or occupant neglects to remove the nuisance, the board are then at liberty to enter upon the private property where it exists, and take such measures as they may see fit for its removal.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 444.

If the order served upon the party prescribes a certain mode of remedying the existing nuisance, the party is not bound to adopt that mode of remedying the evil, if another mode could be made to answer the end sought; nor is the board restricted to that mode, if they are obliged to take action. They are not only at liberty, but it is their duty, to exercise their best discretion at the time.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 445.

The importance of the duty imposed upon boards of health, the necessity of prompt and decisive measures to protect the public health, require a wide discretion in the use of means by which to "destroy, remove, or prevent" such cause of sickness. If it be necessary to the proper performance of their duty, they may undoubtedly, in the exercise of their discretion, resort to means and measures which affect injuriously other lands than those upon which the manifestation of the cause of sickness is found.

Thus, where a railroad company built their railroad originally on piles across a body of water, not interfering with the free circulation of the water, but afterwards from time to time filled in with earth the structure, so as to finally make it solid, without providing sufficient culverts or other means of drainage, and thereby divided and confined the waters, and rendered them stagnant and noisome, a source of filth, and injurious to the public health, after notice to the company and their refusal to act, it was held that the board were justified in entering upon the land of the railroad company, and

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in digging a trench there, for the purpose of removing or preventing the nuisance existing upon the neighboring land.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 446.

It is not to be inferred from the fact that the preliminary order is required to be served only upon the owner or occupant of the land upon which the nuisance is found, that the subsequent proceedings for recovery of the expenses of removal are limited to such owner or occupant. By the express terms of the statute, they may be claimed of any "other person who caused or permitted" the nuisance.

As to such other person, it is only requisite that he has had actual notice from the board of the existence thereof.

City of Salem *v.* Eastern Railroad Company, 98 Mass. 445.

An action to recover expenses incurred in the removal of a nuisance should be brought in the name of the city or town, and not in the names of the members of the board.

City of Salem *v.* Eastern Railroad Co., 98 Mass. 442.
Winthrop *v.* Farrar, 11 Allen, 398.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," but who was not heard, and had no opportunity to be heard, such party is not concluded by the findings or adjudications of the board, and may contest all the facts upon which his liability is sought to be established.

City of Salem *v.* Eastern Railroad Co., 98 Mass. 447.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," the record of proceedings of the board are *prima facie* evidence of the existence of a nuisance which warranted the board in taking action and incurring expense for its removal; but it is not evidence that the nuisance was caused by the defendant, and all the facts upon which it is sought to charge the defendant with liability are open to be tried and determined by the proofs in the case.

City of Salem *v.* Eastern Railroad Co., 98 Mass. 451.

Board may notify occupants of unfit dwelling-place to quit, etc. Public Statutes, c. 80, § 24.

25. The board, when satisfied upon due examination that a cellar, room, tenement, or building, in its town, occupied as a dwelling-place, has become, by reason of the number of occupants, want of cleanliness, or other cause, unfit for such purpose, and a cause of nuisance or sickness to the occupants or the public, may issue a notice in writing to such occupants, or any of them, requiring the premises to be put into a proper condition as to cleanliness, or, if they see fit, requiring the occupants to quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants forcibly and close up the premises, and the same shall not be again occupied as a dwelling-place without the consent in writing of the board. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit not less than ten nor more than fifty dollars.

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When a party is convicted of a nuisance, board may order it destroyed. Public Statutes, c. 80, § 25.

26. When a person is convicted on an indictment for a common nuisance injurious to the public health, the court in its discretion may order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health; and the form of the warrant to the sheriff or other officer may be varied accordingly.

Injunction may issue in cases of nuisance. Public Statutes, c. 80, § 26.

27. The superior court, or a justice thereof in term time or vacation, may, either before or pending a prosecution for a common nuisance affecting the public health, issue an injunction to stay or prevent the same until the matter is decided by a jury or otherwise; may enforce such injunction according to the course of proceedings in chancery; and may dissolve the same when the court or one of the justices shall think proper.

Board may make compulsory examination of premises, when. Public Statutes, c. 80, § 27.

28. When the board thinks it necessary for the preservation of the lives or health of the inhabitants to enter any land, building, premises, or vessel within its town, for the purpose of examining into and destroying, removing, or preventing a nuisance, source of filth, or cause of sickness, and the board or any agent thereof sent for that purpose is refused such entry, any member of the board or such agent may make complaint under oath to any justice of any court of record or to two justices of the peace of the county, stating the facts of the case so far as he has knowledge thereof; and said justice or justices may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such agent of the board, or to any constable of such town, commanding him to take sufficient aid, and at any reasonable time repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and to destroy, remove, or prevent the same, under the directions of the board.

WET, ROTTEN, AND SPONGY LANDS.

Lands injurious to health, etc., deemed a nuisance. Public Statutes, c. 80, § 28.

29. Lands in a city or town which are wet, rotten, or spongy, or covered with stagnant water, so as to be offensive to persons residing in the vicinity thereof, or injurious to health, shall be deemed to be a nuisance, and the board of health or health officer of such city or town may, upon petition and hearing, abate such nuisance in the manner provided in the following sections.

Persons injuriously affected, etc., may apply to board for abatement. Public Statutes, c. 80, § 29.

30. Any person claiming to be injuriously affected by such nuisance may, by petition describing the premises upon which it is alleged to exist, and setting out the nature of the nuisance complained of, apply to the board or health officer for its abatement; whereupon such board or health officer shall proceed to view the premises, and examine into the nature and cause of such nuisance.

31. Upon such examination, the board or health officer, if of

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Board to appoint hearing, etc. Public Statutes, c. 80, § 30.

opinion that the prayer of the petition or any part thereof should be granted, shall appoint a time and place for a hearing, and before the time so appointed shall cause reasonable notice of the time and place to be given to the petitioners, the persons whose lands it may be necessary to enter upon to abate the nuisance, and any other persons who may be affected by the proceedings, and, except in those cities and towns in which the mayor and aldermen and selectmen constitute the board of health, to the mayor or the chairman of the selectmen, that they may be heard upon the necessity and mode of abating such nuisance, and the questions of damages, and of the assessment and apportionment of the expenses of the abatement.

Form of notice, and how served. Public Statutes, c. 80, § 31.

32. Such notice shall be in writing, and may be served, by any person competent to serve civil process, upon the mayor, or chairman of the selectmen, the petitioners, the owner or occupant of any land upon which it may be necessary to enter, or which may be benefited by the abatement, or the authorized agent of such owner or occupant, or by leaving an attested copy of such notice at the last and usual place of abode of such persons; but if the lands are unoccupied, and the owner or agent is unknown, or out of the state, the notice to such owner may be served by posting an attested copy thereof upon the premises, or by advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

Board after hearing may abate nuisance. Manner of such abatement. Damages, and upon whom assessed. Public Statutes, c. 80, § 32.

33. At the time and place appointed for the hearing, the board or health officer shall hear the parties, and after the hearing may cause such nuisance to be abated, according to its or his discretion; and for that purpose may enter and make such excavations, embankments, and drains upon any lands, and under and across any streets and ways, as may be necessary for such abatement; and shall also determine in what manner and at whose expense the improvements made shall be kept in repair, and shall estimate and award the amount of damage sustained by and benefit accruing to any person by reason of such improvements, and what proportion of the expense of making and keeping the same in repair shall be borne by the city or town and by any person benefited thereby. The damages so awarded shall be paid by the city or town, and there shall be assessed to the several persons benefited by such improvements their proportionate part, to be ascertained as before provided, of the expense of making and keeping in repair such improvements, and the same shall be included in the next city or town taxes of such persons, and shall be a lien upon the real estate benefited thereby, and be collected in the same manner as other taxes upon real estate, and shall be liable to abatement as other taxes now are.

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34. The board or health officer shall, within thirty days after the abatement of any nuisance in the manner hereinbefore provided, make return to the city or town clerk of its or his doings in the premises, which return shall be by him recorded in the city or town records.

Board to make return of doings to town clerk. Public Statutes, c. 80, § 33.

35. If the board or health officer unreasonably refuses or neglects to proceed in the matter of such petition, the petitioner may apply by petition to the superior court or any justice thereof, who, upon a hearing and good cause shown, may appoint three commissioners, who shall proceed in the manner hereinbefore provided.

If board unreasonably refuses to act, superior court may appoint commissioners. Public Statutes, c. 80, § 34.

36. Any person aggrieved by the decision of the board, health officer, or commissioners, in their estimate and award of damages, may make complaint to the county commissioners for the county at any time within one year after the return to the city or town clerk; whereupon the same proceedings shall be had as in cases where persons or parties are aggrieved by the award of damages by selectmen for land taken for a town way.

Persons aggrieved in award of damages may apply for jury. Public Statutes, c. 80, § 35.

APPEAL TO COUNTY COMMISSIONERS.

37. Any person aggrieved by the neglect or refusal of the board of health in a city or town to pass all proper orders abating a nuisance or nuisances may appeal to the county commissioners, who may hear and determine the matter of such appeal, and exercise in such case all the powers which the board might exercise.

by refusal of board to abate a nuisance may appeal to county commissioners. Public Statutes, c. 80, § 36.

38. The party so appealing shall, within twenty-four hours after such neglect or refusal, give written notice to the opposite party of his intention so to appeal, and within seven days shall present a petition to some one of the commissioners, setting forth the grievances complained of, and the action of the board of health thereon, and shall thereupon enter into such recognizance before the commissioners, in such sum, and with such surety or sureties, as they shall order.

Party appealing to give notice, etc. Other proceedings. Public Statutes, c. 80, § 37.

39. Each commissioner, when acting under the provisions of this chapter, shall tax three dollars per day for time, and five cents a mile for travel to and from the place of meeting, to be paid into the county treasury; and such costs shall in the first instance be paid by the appellant, and the commissioners may award that such costs and any other costs of the proceeding shall be paid by either party, as in their judgment justice shall require.

Costs and expenses, how paid. Public Statutes, c. 80, § 38.

INFECTED PERSONS AND ARTICLES.

40. The board of health of a town may grant permits for the removal of any nuisance, infected articles, or sick person, within the limits of its town, when it thinks it safe and proper so to do.

Board may permit removal of infected articles, etc. Public Statutes, c. 80, § 39.

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Board to make provision for persons infected. Public Statutes, c. 80, § 40.

41. When a person coming from abroad or residing in a town in this state is infected, or lately has been infected, with the plague or other sickness dangerous to the public health, except as is otherwise provided in this chapter, the board shall make effectual provision in the manner which it judges best for the safety of the inhabitants by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessaries, which shall be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; or, if he is not an inhabitant of any town, at the charge of the commonwealth.

Notice should be given to the town to which the infected person belongs, before commencing an action to recover the expenses incurred by furnishing him with assistance and necessaries.

Inhabitants of Springfield *v.* Inhabitants of Worcester, 2 Cush. 52.

The following notice sent by the selectmen of Springfield to the selectmen of Worcester was held to be sufficient:—

SPRINGFIELD, May 25, 1846.

GENTLEMEN,— James E. Belden, a colored man, came here, not far from the 1st of this month, diseased with the small-pox. The expenses of his sickness have been borne by this town, the man himself having no means of paying them. According to the information we have, the town of Worcester is liable for these expenses. We have therefore thought it our duty (although not legally obliged so to do) to notify you of the case, that you may take such measures in regard to it as you may deem proper. We are told Henry W. Miller, of your place, is well acquainted with Belden.

The physicians who have had charge of the case state that their patient will probably recover. His disease has been the worst form of small-pox.

In behalf of the selectmen of Springfield,

HENRY MORRIS, *Chairman.*

TO THE SELECTMEN OF WORCESTER.

Inhabitants of Springfield *v.* Inhabitants of Worcester, 2 Cush. 52.

If infected person cannot be removed, others may be. Public Statutes, c. 80, § 41.

42. If the infected person cannot be removed without danger to his health, the board shall make provision for him, as directed in the preceding section, in the house in which he may be; and may cause the persons in the neighborhood to be removed, and take such other measures as it judges necessary for the safety of the inhabitants.

Persons may be stationed in places bordering on other states to examine, etc. Public Statutes, c. 80, § 42.

43. The board of health of a town near to or bordering upon either of the neighboring states may appoint, by writing, suitable persons to attend at places by which travellers may pass from infected places in other states; who may examine such travellers as it suspects of bringing any infection dangerous to the public health, and if need be may restrain them from travelling until licensed thereto by the board of health of the town to which they may come. A traveller coming from such infected place, who without such license travels within this state, (except to return by the most direct way to the state whence he came,) after he has

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been cautioned to depart by the persons so appointed, shall forfeit a sum not exceeding one hundred dollars.

Two justices may issue warrant to remove sick persons, etc. Public Statutes, c. 80, § 43.

44. Two justices of the peace may, if need be, make out a warrant directed to the sheriff of the county or his deputy, or to any constable, requiring them under the direction of the board to remove any person infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessaries, for the accommodation, safety, and relief of the sick.

One justice may issue warrant to secure infected articles, etc. Sheriff may impress aid. Public Statutes, c. 80, § 44.

45. When, upon the application of the board, it appears to a justice of the peace that there is just cause to suspect that baggage, clothing, or goods, found within the town, are infected with the plague or other disease dangerous to the public health, he shall, by warrant directed to the sheriff or his deputy, or to any constable, require him to impress so many men as said justice may judge necessary to secure such baggage, clothing, or goods, and to post said men as a guard over the house or place where such articles are lodged; who shall take effectual care to prevent persons from removing or coming near the same until due inquiry is made into the circumstances.

may take houses and stores for safe keeping of goods, etc. Public Statutes, c. 80, § 45.

46. The justice may by the same warrant, if it appears to him necessary, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may cause them to be removed thereto, or otherwise detained, until, in the opinion of the board, they are freed from infection.

Officers may break open houses, shops, etc., and command aid. Public Statutes, c. 80, § 46.

47. The officers, in the execution of the warrant, shall, if need be, break open any house, shop, or other place, mentioned in the warrant, where such articles are; and may require such aid as is necessary to effect the execution of the warrant. Whoever neglects or refuses to assist in the execution of the warrant, after being commanded to assist by either of said officers, shall forfeit a sum not exceeding ten dollars.

Expenses to be paid by owners of goods. Public Statutes, c. 80, § 47.

48. The charges of securing such articles, and transporting and purifying the same, shall be paid by the owners, at such rates and prices as may be determined by the board.

Town to make compensation for houses, etc or services impressed. Public Statutes, c. 80, § 48.

49. When a sheriff or other officer impresses or takes up any houses, stores, lodging, or other necessaries, or impresses men, as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town in which such persons or property are so impressed.

Removal of prisoners attacked with disease. Public Statutes, c. 80, § 49.

50. When a person confined in a common jail, house of correction, or workhouse, has a disease which, in the opinion of the physician of the board or of such other physician as it may consult,

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is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall by its order in writing direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until its further order. If such person recovers from the disease, he shall be returned to said prison or other place of confinement.

Return of removal to be made to court. Such removal not an escape. Public Statutes, c. 80, § 50.

51. If the person so removed is committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

VACCINATION.

Parents, etc., to cause children to be vaccinated. Penalty for neglect. Public Statutes, c. 80, § 51.

52. Parents and guardians shall cause their children and wards to be vaccinated before they attain the age of two years, and revaccinated when the selectmen or mayor and aldermen shall after five years from the last vaccination require it. For every year's neglect the party offending shall forfeit five dollars.

Selectmen, etc., to enforce vaccination. Penalty for neglect. Public Statutes, c. 80, § 52.

53. The selectmen and mayor and aldermen shall require and enforce the vaccination of all the inhabitants, and, when in their opinion the public health requires it, the revaccination of all the inhabitants who do not prove to their satisfaction that they have been successfully vaccinated or revaccinated within five years. Every person over twenty-one years of age, not under guardianship, who neglects to comply with any such requirement, shall forfeit five dollars.

Towns to provide means. Public Statutes, c. 80, § 53.

54. Towns shall furnish the means of vaccination to such of their inhabitants as are unable to pay for the same.

Inmates of factories, etc., to be vaccinated. Public Statutes, c. 80, § 54.

55. Incorporated manufacturing companies, superintendents of almshouses, state reform schools, industrial schools, lunatic hospitals, and other places where the poor and sick are received, masters of houses of correction, jailers, keepers of prisons, warden of the state prison, and superintendents or officers of all other institutions supported or aided by the state, shall at the expense of their respective establishments or institutions cause all inmates thereof to be vaccinated immediately upon their entrance thereto, unless they produce sufficient evidence of previous successful vaccination within five years.

Towns may make further provision for vaccination. Public Statutes, c. 80, § 55.

56. Each town may make further provision for the vaccination of its inhabitants, under the direction of the board of health or a committee chosen for the purpose.

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LYING-IN HOSPITALS.

Selectmen may license lying-in hospitals, on certificate, etc. Public Statutes, c. 80, § 56.

57. The selectmen of a town may license any person to establish or keep therein a lying-in hospital, hospital ward, or other place for the reception, care, and treatment of women in labor, if the board of health shall first certify to the selectmen that the person applying for such license is in its judgment a suitable person, and that from its inspection and examination of such hospital, hospital ward, or other place aforesaid, the same is suitable, and properly arranged and provided for such business.

Licenses to be for two years, but revocable. Public Statutes, c. 80, § 57.

58. Such license shall continue in force for two years, subject, however, to revocation by the selectmen.

Hospitals subject to visitation, etc. Public Statutes, c. 80, § 58.

59. Every such hospital, hospital ward, or other place shall be subject to visitation and inspection at any time by the board of health, the chief of police, and the selectmen; and if it receives in a year more than six women as patients in labor, it shall also be subject to like visitation and inspection by the state board of health, lunacy, and charity.

Penalties for keeping hospital without license. Public Statutes, c, 80, § 59.

60. Whoever establishes or keeps or is concerned in establishing or keeping a hospital, hospital ward, or other place for the purpose mentioned in section fifty-six, or is engaged in any such business, without such license, shall for the first offence be punished by fine not exceeding five hundred dollars, one-half of which shall be paid to the complainant, and the other half to the town; and for any subsequent offence by imprisonment in the jail or house of correction not exceeding two years.

PROTECTION OF INFANTS.*

Persons taking infants to nurse or board to give notice to board of health. Power of the board. Public Statutes, c. 80, § 60.

61. Whoever engages in the business of taking nursing infants or infants under three years of age to board, or of entertaining or boarding more than two such infants in the same house at the same time, shall, within two days after the reception of every such infant beyond the first two, give written notice to the board of health of the city or town where such infant is so to be entertained or boarded, specifying the name and age of the child and the name and place of residence of the party so undertaking its care; and such board may enter and inspect said house and premises while said business is carried on, and direct and enforce such sanitary measures respecting such children and premises as it may deem proper.

Penalties. Public Statutes, c. 80, § 61.

62. Whoever violates any of the provisions of the preceding section, or refuses admission to such board for said purpose, shall be punished by fine of not less than fifty nor more than five hundred dollars.

* See Acts of 1882, chap. 270, page 102 of this Manual.

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QUARANTINE.

Towns may establish a quarantine ground. Public Statutes, c. 80, § 62.

63. A town may establish a quarantine ground in a suitable place either within or without its own limits; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained.

Two or more towns may establish a common quarantine ground. Public Statutes, c. 80, § 63.

64. Two or more towns may at their joint expense establish a quarantine ground for their common use in a suitable place either within or without their own limits; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be.

Board of health may establish the quarantine of vessels. Public Statutes, c. 80, § 64.

65. The board of health in each seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor, and may make such quarantine regulations as it judges necessary for the health and safety of the inhabitants.

Quarantine regulations to extend to all persons, etc. Public Statutes, c. 80, § 65.

66. Such regulations shall extend to all persons, goods, and effects arriving in such vessels, and to all persons who may visit or go on board of the same.

Penalty for violation after public notice. Public Statutes, c. 80, § 66.

67. Whoever violates any such regulation after notice thereof has been given in the manner before provided in this chapter shall forfeit not less than five nor more than five hundred dollars.

Vessels suspected of infection to be ordered to quarantine ground. Public Statutes, c. 80, § 67.

68. The board in each seaport town may at any time cause a vessel arriving in such port, when such vessel or the cargo thereof is in its opinion foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees, or persons in possession of the same; and may cause all persons arriving in or going on board of such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under their orders.

Penalty if master, seaman, etc., refuse to answer on oath. Public Statutes, c. 80, § 68.

69. A master, seaman, or passenger, belonging to a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where an infectious distemper prevails that may endanger the public health, who refuses to make answer on oath to such questions as may be asked him relating to such infection or distemper by the board of health of the town to which such vessel may come, (which oath any member of the board may administer,) shall forfeit a sum not exceeding two hundred dollars; and if not able to pay said sum, he shall suffer six months' imprisonment.

Quarantine expenses to be paid by person or owner. Public Statutes, c. 80, § 69.

70. All expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by such person or the owner of such vessel or goods respectively.

The owner of a vessel under quarantine regulations is not liable for the expenses of a seaman at a hospital, to which he had been transferred by order of the board of health of a town, and which was under their care.

Inhabitants of Provincetown *v.* Smith, 120 Mass. 96.

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HOSPITALS AND DANGEROUS DISEASES.

Hospitals may be provided by towns. Public Statutes, c. 80, § 70.

71. Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health.

to be under orders of board of health. Public Statutes, c. 80, § 71.

72. Such hospitals shall be subject to the orders and regulations of the board, or of a committee of the town appointed for that purpose.

not to be near dwelling-house, etc. Public Statutes, c. 80, § 72.

73. No such hospital shall be established within one hundred rods of an inhabited dwelling-house situated in an adjoining town, without the consent of such town.

not to be occupied without authority. Injunction. Public Statutes, c. 80, § 73.

74. Whoever occupies or uses a building for a hospital in a part of a city or town prohibited by the mayor and aldermen or selectmen shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a portion of a month; and the supreme judicial court in term time or vacation may issue an injunction to prevent such occupancy or use.

Physicians, etc., in hospitals, subject to board of health. Public Statutes, c. 80, § 74.

75. When a hospital is established, as provided in section seventy, the physician, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits thereof, and all furniture and other articles used or brought there, shall be subject to such regulations as may be made by the board of health or the committee appointed for that purpose.

If dangerous disease breaks out, board to provide hospital, etc. Public Statutes, c. 80, § 75.

76. When a disease dangerous to the public health breaks out in a town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not admit of his removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board as before provided.

Selectmen to give notice of infected places Public Statutes, c. 80, § 76.

77. When such disease is found to exist in a town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety. And whoever obstructs the selectmen, board of health, or its agent, in using such means to prevent the spreading of the infection, or wilfully removes, obliterates, defaces, or handles the red flags or other signals so displayed, shall

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forfeit for each offence not less than ten nor more than one hundred dollars.

Penalty on persons in hospitals for violating regulations. Public Statutes, c. 80, § 77.

78. If a physician or other person in any of the hospitals or places of reception before mentioned, or who attends, approaches, or is concerned with the same, violates any regulation lawfully made in relation thereto, either with respect to himself or his or any other person's property, he shall for each offence forfeit not less than ten nor more than one hundred dollars.

Householders to give notice of dangerous diseases. Penalty. Public Statutes, c. 80, § 78.

79. When a householder knows that a person within his family is sick of small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells. If he refuses or neglects to give such notice, he shall forfeit a sum not exceeding one hundred dollars.

Penalty on physician for not giving notice, etc. Public Statutes, c. 80, § 79.

80. When a physician knows that a person whom he is called to visit is infected with small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town; and if he refuses or neglects to give such notice, he shall forfeit for each offence not less than fifty nor more than one hundred dollars.

Expenses recoverable of individuals, how sued for. Public Statutes, c. 80, § 80.

81. Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, which are recoverable of a private person or corporation, may be sued for and recovered in an action of contract.

Fines and forfeitures to inure to use of towns. Public Statutes, c. 80, § 81.

82. Fines and forfeitures incurred under general laws, the special laws applicable to a town, or the by-laws and regulations of a town, relating to health, shall inure to the use of such town.

Under statute 1849, chap. 211, sect. 7, which provides that all fines and forfeitures, incurred under the general law or the special laws applicable to any town or city, or the ordinances, by-laws, and regulations of any town or city, relating to health, shall inure to the use of such town or city, and may be recovered by complaint in the name of the treasurer, it was held that such fines and forfeitures were recoverable only by complaint in the name of the treasurer of the city or town, and in no other way.

Commonwealth *v.* Fahey, 5 Cush. 408.

Under sect. 26, chap. 28 of the Public Statutes, the city marshal or other police officer, or the city treasurer, may prosecute for all fines and forfeitures which may inure to the city.

The ordinances and by-laws of the city of Boston relating to burying-grounds and the burial of the dead were held to be regulations relating to health within the meaning of the above statute.

Commonwealth *v.* Fahey, 5 Cush. 411.

Certain provisions not to apply to small-pox. Public Statutes, c. 80, § 82.

83. The provisions of sections forty, forty-one, seventy-five, seventy-six, and seventy-seven, of chapter eighty, Public Statutes, so far as they confer authority for the removal of patients from their

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homes, except in cases of persons residing in boarding-houses, hotels, or where two or more families occupy the same dwelling, and other cases, where in the opinion of the board and the attending physician the case cannot be properly isolated, shall not apply to small-pox.

Expenses, how to be paid. Public Statutes, c. 80, § 83.

84. All reasonable expenses which have been heretofore or may hereafter be incurred by the board of health of a city or town, in making the provision required by law for a person infected with the small-pox or other disease dangerous to the public health, shall be paid by the person himself, his parents, or master, if able; otherwise by the town in which he has a legal settlement; and if he has no settlement, by the commonwealth, in which case the bills therefor shall be approved by the state board of health, lunacy, and charity.

OFFENSIVE TRADES.

Board to assign places for exercising offensive trades; and may prohibit them. Public Statutes, c. 80, § 84.

85. The board of health of a town shall from time to time assign certain places for the exercise of any trade or employment which is a nuisance or hurtful to the inhabitants, or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors, or is otherwise injurious to their estates, and may prohibit the exercise of such trade or employment in places not so assigned; the board may also forbid such exercise within the limits of the town or in any particular locality thereof. All such assignments shall be entered in the records of the town, and may be revoked when the board shall think proper.

So far as this section extends, the rules and course of proceeding under the common law are superseded, but in all other respects it continues in force as before. If the board of health acts and assigns places in which any particular trade or employment may be carried on, such an assignment would undoubtedly legalize the occupation of any person conducting his business in that place, and he would then be liable to no process, suit, or prosecution, other than those which are specially appointed and prescribed. But if no such assignment has been made, and the board, in the exercise of their discretion, have not seen fit to act at all, a remedy for injuries to the public or for violation of private rights by the permanent maintenance of offensive trades and employments must be found in the rules and principles of the common law. The statute, by leaving that body to act according to the discretion of its members, has imposed no duty upon them which they are imperatively bound to perform, and no means have been provided by a recourse to which, as by a complaint made to them, they can be compelled to exercise the power with which they are intrusted.

Commonwealth *v.* Rumford Chemical Works, 16 Gray, 231.

The board may pass an order prohibiting the exercise of an offensive trade, without having given previous notice to parties interested.

Belcher *v.* Farrar, 8 Allen, 327.

In the above case, Bigelow, C. J., says, "If, as preliminary to the exercise of any jurisdiction over the subject-matter, the selectmen were required

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to give notice to all persons exercising offensive trades or employments within the limits of the town, of their intention to prohibit the continuance of them, it would follow necessarily that such persons would have a right to appear and object, and ask for a hearing and trial on the question whether the use of their property was hateful or noxious, so as to fall within any of the classes contemplated by the statute. This would often lead to protracted examinations, which might occupy days or weeks. If, in the mean time, the alleged offensive and noisome trades might be carried on, great injury to health might be occasioned; and it would be impossible to prevent the evils which it was the manifest object of the statute promptly to suppress."

It is questionable whether the prohibition of offensive trades is a proper subject of a by-law or ordinance, because that matter is specially provided for by statute; and to prohibit their exercise in any particular locality in a town or city by by-law or ordinance would interfere with the right of appeal to a jury which the statute secures.

Commonwealth *v.* Patch, 97 Mass. 223.

The keeping of swine cannot be considered a trade within the meaning of the law, and would be a proper subject of a by-law or ordinance.

Commonwealth *v.* Patch, 97 Mass. 223.

An order of the board under this section is not in the nature of an adjudication of a particular case, but of a general regulation of the trade or employment mentioned therein. It is not to be construed with technical strictness, but with the same liberality as all votes and proceedings of municipal bodies or officers who are not presumed to be versed in the forms of law; and every reasonable presumption is to be made in its favor. It need not state in direct terms that the trade which it prohibits is a nuisance. It is sufficient if the order clearly shows, that, in the opinion of the board, the exercise of such trade will be hurtful to the inhabitants, or injurious to the public health, or be attended by noisome and injurious odors.

Taunton *v.* Taylor, 116 Mass. 261.

The following order of a board of health was held to be a valid exercise of the power conferred upon boards of health:—

"Ordered, that the exercise of the trade or employment of preparing tripe, manufacturing neat's-foot oil, tallow and glue stock, and the boiling and trying of bones, hoofs, heads, refuse, and partially decayed animal matter, and as a part of such trade or employment, the storing about the premises where such business is carried on, of putrid meats, bones, heads, legs, and the various other materials from which offensive smells emanate, which are used in such trade or employment, be and the same hereby is forbidden within the limits of the city of Taunton."

Taunton *v.* Taylor, 116 Mass. 261.

A board of health may regulate as well as prohibit the exercise of offensive trades.

Sawyer *v.* State Board of Health, 125 Mass. 195.

The same power by this section is given to the boards of health of towns and cities as is given by sect. 93, chap. 80, Public Statutes, to the state board of health, lunacy, and charity. The only difference is this: that by sect. 93 the state board is bound to give notice to a party, and allow him a hearing before it can pass an order of prohibition; but under this section the local boards may pass an order of prohibition without any previous notice.

Sawyer *v.* State Board of Health, 125 Mass. 191.

Superior court on complaint may revoke

86. When it appears on a trial before the superior court for the county, upon a complaint made by any person, that a place or

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building so assigned has become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or is otherwise hurtful or dangerous to the neighborhood or to travellers, the court may revoke such assignment and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented.

such assignment. Public Statutes, c. 80, § 85.

87. A person injured either in his comfort or the enjoyment of his estate by such nuisance may have an action of tort for the damage sustained thereby.

Action for damages from nuisance. Public Statutes, c. 80, § 86.

88. Orders of prohibition shall be served upon the occupant or person having charge of the premises where such trade or employment is exercised. If the party upon whom such order is served for twenty-four hours after such service refuses or neglects to obey the same, the board shall take all necessary measures to prevent such exercise; and the person so refusing or neglecting shall forfeit not less than fifty nor more than five hundred dollars.

Orders of prohibition, etc., to be served on occupant. If he refuses to obey, board may prevent. Penalty. Public Statutes, c. 80, § 87.

A notice ordered by the board and duly received is sufficiently served. It need not necessarily be served by a constable or other officer.

Winthrop *v.* Farrar, 11 Allen, 398.

The supreme judicial court has authority under its general jurisdiction as a court of equity to restrain by injunction the carrying on of an offensive trade which has been prohibited by a board of health. But the board must act in good faith towards the parties interested, and if by their action they have misled them and put them in a position to prevent their availing themselves of their right to appeal, and by reason thereof they have lost their opportunity to appeal, the court will refuse to enforce the orders of the board by a process in equity.

Winthrop *v.* Farrar, 11 Allen, 402.

A bill in equity to restrain a party from exercising an offensive trade or employment prohibited by the board of health of a city is properly brought in the name of the city and properly signed by the mayor.

Taunton *v.* Taylor, 116 Mass. 262.

89. Any person aggrieved by an order may appeal therefrom, and shall within three days from the service thereof upon him apply to the superior court, if in session in the county where such order is made, or in vacation to a justice of said court, for a jury; and such court or justice shall issue a warrant for a jury, to be impanelled at a time and place expressed in the warrant, in the manner provided in regard to the laying out of highways. If a person by mistake of law or fact or by accident fails to appeal from any such order, and to apply to the superior court or a justice thereof for a jury within said three days, and if he makes it appear to the court or justice that such failure was caused by mistake or accident, he may at any time within thirty days from the service of the order upon him appeal therefrom and apply for a jury with the same effect as if done within the said three days.

Appeal by person aggrieved. Public Statutes, c. 80, § 88.

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Trade not to be exercised meanwhile. Public Statutes, c. 80, § 89.

90. During the pendency of the appeal such trade or employment shall not be exercised contrary to the order; and upon any violation of the order the appeal shall forthwith be dismissed.

The statute giving to boards of health the power to forbid the exercise, within the limits of a town or city, or in any particular locality thereof, of any trade or employment which is a nuisance or hurtful to the inhabitants or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors or is otherwise injurious to their estates, and providing for an appeal, and that during the pendency of the appeal such trade or employment shall not be exercised contrary to the order, is within the authority of the legislature and constitutional.

Taunton *v.* Taylor, 116 Mass. 260.

In Taunton *v.* Taylor, 116 Mass. 260, Gray, C. J., says, "To allow the offensive trade to be carried on until it had been decided by a jury to be a nuisance, and the questions of law arising upon such a trial had been determined by the court, would defeat the purpose of the statute. It is a case in which private rights must be held subordinate to the public welfare, and falls within the strictest interpretation of the maxim, *Salus populi suprema lex.*

"The rights of any person to be affected by the order of prohibition are reasonably secured by requiring the order to be served upon him or the person in charge of his business, and by allowing him an appeal to a jury to be impanelled immediately without waiting for a regular term of court, and by whose verdict the order may be altered, annulled, or affirmed."

Taunton *v.* Taylor, 116 Mass. 260.

Verdict of jury may alter, etc., order; to be returned for acceptance. Public Statutes, c. 80, § 90.

91. The verdict of the jury, which may either alter the order, or affirm or annul it in full, shall be returned to the court for acceptance as in case of highways; and said verdict when accepted shall have the authority and effect of an original order from which no appeal had been taken.

The following order was issued by the state board of health: —

COMMONWEALTH OF MASSACHUSETTS.

State Board of Health, Boston, April 5, 1876.

To George A. Sawyer *of the town of Watertown, in the County of Middlesex.*

You are hereby notified, that at a meeting of the state board of health, held at Boston, in the county of Suffolk, on the third day of April, 1876, it was ordered, on the petition of W. H. Ingraham and four others, and after a hearing of the parties, that George A. Sawyer of Watertown be, and he hereby is, directed to discontinue the business of slaughtering and rendering on the premises now occupied by him, on and after the fifteenth day of May, 1876. And it is adjudged and determined by this board, that the premises are noxious and offensive, and that the public health and the public comfort and convenience require that the said George A. Sawyer be ordered, as aforesaid, to cease and desist from carrying on the said business on the said premises, on and after the fifteenth day of May, 1876. And you are hereby directed to comply in all respects with the requirements of the said order, under penalty of what may follow thereon.

An appeal was taken to a jury of the superior court. The case was then tried in the superior court, and the jury returned the following verdict and special findings: —

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"The jury alter the order of the state board of health, dated April 5, 1876, as follows: That Mr. George A. Sawyer shall be permitted to continue the business of slaughtering animals on the premises now occupied by him in the town of Watertown, under the restrictions as per appended sheet.

"1. Mr. George A. Sawyer shall be required to concrete the cellar under his slaughter-house, in concave form.

"2. Mr. Sawyer shall not keep swine in or under his slaughter-house.

"3. All offal and offensive matter shall be removed from the above premises before ten o'clock P.M. of the day of killing, in covered, water-tight boxes or tanks.

"4. Said premises shall be kept at all times in a condition of neatness and cleanliness acceptable to the local board of health."

Held, that the several findings of the jury were sufficiently clear, precise, and definite in matters of form, and were proper in substance.

Sawyer *v.* State Board of Health, 125 Mass. 196.

Where an appeal is taken and trial had before a sheriff's jury, if the defendant is dissatisfied with the verdict, his remedy is, by application to the superior court, to set it aside, and, if aggrieved by any ruling of that court in matter of law, by bringing the question before the supreme court on exceptions or appeal.

Taunton *v.* Taylor, 116 Mass. 262.

Costs, how assessed, and to what amount. Public Statutes, c. 80, § 91.

92. If the order is affirmed by the verdict, the town shall recover costs against the appellant; if it is annulled, the appellant shall recover damages and costs against the town; and if it is altered, the court may render such judgment as to costs as in its discretion may seem just.

Slaughter-houses, etc., not to be used with, out leave. Penalty. Public Statutes, c. 80, § 92.

93. Whoever occupies or uses a building for carrying on therein the business of slaughtering cattle, sheep, or other animals, or for a melting or rendering establishment, or for other noxious or offensive trades and occupations, or permits or allows said trades or occupations to be carried on upon premises owned or occupied by him, without first obtaining the written consent and permission of the mayor and aldermen of the city or selectmen of the town in which the building or premises are situated, shall forfeit a sum not exceeding two hundred dollars for every month he so occupies or uses such building or premises, and in like proportion for a longer or shorter time: *provided*, that this section shall not apply to any building or premises occupied or used for the trades or occupations before described on the eighth day of May in the year eighteen hundred and seventy-one; but no person occupying or using any building or premises on said date for the trades or occupations aforesaid shall enlarge or extend the same without first obtaining the written consent and permission of the mayor and aldermen or selectmen.

The above section is constitutional and valid as a police regulation.

Watertown *v.* Mayo, 109 Mass. 318.

Where a person before the passage of the above statute used and occupied a building on his own land as a slaughter-house, and therein slaughtered

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cattle, sheep, and other animals, as a business, and after the passage of the statute he continued the business of slaughtering in said building, when the same caught fire accidentally, and was consumed, and afterwards he immediately rebuilt said slaughter-house on the same site, and continued his business of slaughtering cattle, sheep, and other animals therein, and it further appeared that the new building was different from the old one in its construction and arrangement, but was not larger or more extensive in size or capacity, the court held that the right to continue, without license, the same business in the building, was not forfeited, and that the building was within the exception stated in the section.

Watertown *v.* Sawyer, 109 Mass. 320.

The manifest purpose of the legislature is to protect the business already established, in the place where it is carried on, not the identical building which happened to be standing for its use when the law was enacted.

Watertown *v.* Sawyer, 109 Mass. 320.

A person was the owner of land and buildings used for a long period for a melting and rendering establishment and for the manufacture of soap in Somerville, a city containing more than four thousand inhabitants. In this rendering business, he made use of two open kettles; but the building in which they were placed did not cover the entire lot of land. In the year 1872 he tore down a part of his buildings, which were old and dilapidated, and, without consent or permission from the mayor and aldermen of Somerville, erected a new building, standing partly on land covered by the old buildings and partly on land that had not been so covered. The new building covered about one-third as much space as the old buildings, and was two stories high with a French roof, while the old buildings were, for the most part, only one story in height. The owner's purpose was to place in that part of the new building formerly covered by the old one a covered kettle or tank for melting and rendering purposes, and to use the residue of the building for storage and other purposes connected with his business, and to tear down and discontinue the use of the old buildings and of the two open kettles. The capacity of the proposed new tank for rendering purposes would not exceed, and might not equal, that of the two open kettles. The old buildings were standing and in use, except so far as displaced by the new building.

Upon these facts the court held that it did not appear that the defendant had enlarged the premises occupied by him for the business in question, or that he had increased or purposed to increase the business, and refused to issue an injunction restraining him from so enlarging and extending them.

Somerville *v.* O'Neil, 114 Mass. 353.

State board may prohibit offensive trades. Penalty. Public Statutes, c. 80, § 93.

94. When any building or premises are so occupied or used, the state board of health, lunacy, and charity shall, upon application made to it for that purpose, appoint a time and place for hearing the parties, and give due notice thereof to the party against whom the application is made, and after such notice and hearing may, if in its judgment the public health or the public comfort and convenience so require, order any person to desist and cease from further carrying on said trades or occupations in such building or premises; and any person thereafter continuing so to occupy or use such building or premises shall forfeit a sum not exceeding two hundred dollars for every month of such occupancy and use, and in like proportion for a longer or shorter time.

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Precisely the same power is given by sect. 84, chap. 80 of the Public Statutes, to the local boards of health, as by this section is given to the state board. The only difference is this, that the state board is bound to give notice to a party, and allow him a hearing, before it can pass an order of prohibition; but the local boards may pass an order of prohibition without any previous notice.

Sawyer *v.* State Board of Health, 125 Mass. 191.

The same right to appeal to a jury from an order of the state board exists, as is provided for an appeal from an order of a local board under sect. 84.

Sawyer *v.* State Board of Health, 125 Mass. 191.

Injunction to prevent offensive trades. Public Statutes, c. 80, § 94.

95. The supreme judicial court in term time or vacation may issue an injunction to prevent the occupancy, use, enlargement, or extension of any building or premises occupied or used for the trades or occupations aforesaid, without the written consent and permission being first obtained; and also in like manner to enforce the orders of the state board issued under the preceding section.

A bill in equity to restrain by injunction a person from occupying and using a building for carrying on the business of slaughtering cattle, sheep, or other animals, without the written consent of the selectmen, is properly brought in the name of the inhabitants of the town.

Inhabitants of Watertown *v.* Mayo, 109 Mass. 315.

Other remedies not impaired by preceding provisions. Public Statutes, c. 80, § 95.

96. The three preceding sections shall not be so construed as to impair any other remedies which may exist in cases of nuisance.

SWINE-SLAUGHTERING ASSOCIATIONS.

Corporations may be formed for buying and slaughtering swine, etc. Public Statutes, c. 107, § 1.

97. Three or more persons who associate themselves together by such an agreement in writing as is described in section sixteen of chapter one hundred and six of the Public Statutes, with a capital of not less than one hundred thousand nor more than five hundred thousand dollars, with the intention of forming a corporation for the purpose of buying and slaughtering swine and of melting and rendering and pork-packing, upon complying with the provisions of section twenty-one of said chapter shall be and remain a corporation, with all the powers, rights, and privileges, and subject to all the duties, limitations, and restrictions, contained in said chapter, except as hereinafter provided.

may take land, with approval of state board of health, etc.; to file a description in registry of deeds. Public Statutes, c. 107, § 2.

98. Such corporation may take and hold by purchase or otherwise such parcel of land, not exceeding one hundred acres in extent, and situated in such place, as the state board of health, lunacy, and charity may determine to be suitable for said business; and shall, within sixty days from the time of taking any land otherwise than by purchase, cause to be signed by its president and filed in the registry of deeds for the county or district wherein said lands lie a description thereof as certain as is required in a common conveyance of lands and a statement of the purpose for

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which the lands are taken; but no land shall be so taken without the approval in writing of the mayor and aldermen of the city or of the selectmen of the town in which it is situated.

Liability for damages. Trial by jury. Public Statutes, c. 107, § 3.

99. Such corporation shall be liable to pay all damages sustained by any persons in their property by the taking of any land for the purposes of this chapter. A person sustaining damages as aforesaid, and not agreeing upon the sum to be paid therefor, may apply by petition for the assessment of his damages, at any time within one year from the taking of said land, to the superior court in the county in which said land is situate; such petition may be filed in the clerk's office of said court in vacation or in term time, and the clerk shall thereupon issue a summons to the corporation, returnable, if issued in vacation, to the then next term of the said court, held fourteen days at least after the issuing of said summons, and, if in term time, returnable on such day as the court shall order, to appear and answer to the said petition; the said summons shall be served fourteen days at least before the return day thereof by leaving a copy thereof with the clerk of the corporation, and upon the return of said summons, duly served, the said petition shall stand as a cause in said court; and upon said petition all questions of fact relating to the damages sustained by the petitioner shall be heard and determined, and the amount of such damages shall be assessed by a jury, unless the parties in writing waive their right to a jury, and agree that the same shall be determined by the court; and the verdict of said jury, being accepted and recorded by the court, or the award of the court if jury trial is waived, shall be final and conclusive, and judgment shall be rendered and execution issued thereon; and costs shall be recovered by the petitioner if the amount of said judgment exceeds the amount offered him for his damage before the filing of said petition, otherwise the corporation shall recover its costs.

To build suitable buildings; regulations by state board. Public Statutes, c. 107, § 4.

100. Such corporation shall proceed to build upon such land suitable buildings for the slaughtering of swine and for melting and rendering, and all necessary stables and out-buildings. No such building shall be erected until the plans thereof, with all details of construction, have been submitted to and approved by said state board, or some person designated by it to examine them. The corporation shall carry on all its business in accordance with such regulations as said state board shall, from time to time, establish and furnish in writing to the clerk of the corporation; and for each violation of said regulations, it shall forfeit not less than twenty nor more than five hundred dollars.

Such corporation may carry on slaughtering business.

101. Subject to the foregoing provisions, such corporation may manufacture and sell any of the usual products of said slaughter-

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ing and melting and rendering business, or may lease or permit other persons to use their buildings or parts thereof, on such terms as may be agreed upon. Each member of the corporation may slaughter swine on said premises, subject to such regulations and tariff of prices as the corporation may by vote at any regular meeting establish, and to the regulations of the said state board. A person engaged in business on the premises of such corporation, who violates any regulation of said state board, shall forfeit not less than twenty nor more than five hundred dollars.

Each member may slaughter on premises. Public Statutes, c. 107, § 5.

INSPECTION AND SALE OF PROVISIONS AND ANIMALS INTENDED FOR SLAUGHTER.

102. The mayor and aldermen of cities and the selectmen of towns may annually appoint one or more persons to be inspectors of provisions and of animals intended for slaughter. Such inspectors shall be sworn faithfully to discharge the duties of their office, and shall receive such compensation as the city council or the selectmen shall determine.

Appointment of inspectors of provisions. Public Statutes, c. 58, § 1.

103. Said inspectors may inspect all animals intended for slaughter, and all meats, fish, vegetables, produce, fruits, and provisions of all kinds, found in said cities or towns or exposed for sale or kept with intent to sell therein; and may for this purpose enter into all buildings or enclosures where said animals, meats, fish, vegetables, produce, fruits, or provisions are kept, stored, or exposed for slaughter or sale. When such animals, meat, fish, vegetables, produce, fruit, or provisions are found on such inspection to be tainted, diseased, corrupted, decayed, or unwholesome from any cause, said inspectors shall seize the same, and cause them or it to be destroyed or disposed of otherwise than for food; but if, at the time of the seizure, the owner of the property seized notifies in writing the inspector seizing the same of his desire to appeal to the board of health, said inspector shall cause said animals, meat, fish, vegetables, produce, fruit, or provisions to be inspected by said board of health, or by a committee thereof consisting of not less than two members; and if said board or committee find the same to be tainted, diseased, corrupted, or unwholesome, they shall order the same to be destroyed or disposed of otherwise than for food. If said board or committee do not so find, they shall order said animals, meat, fish, vegetables, produce, fruit, or provisions to be forthwith returned to the owner thereof. All moneys received by said inspectors or board of health for property disposed of as aforesaid shall, after deducting all expenses incurred by reason of such seizure, be paid to the owner of such property.

Duties and powers of inspectors. Public Statutes, c. 58, § 2.

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Duties and powers of inspectors relative to veal. Public Statutes, c. 58, § 3.

104. Said inspectors may inspect all veal found in said cities or towns, or offered or exposed for sale or kept with intent to sell therein, and if said veal is, in the judgment of the inspector, that of a calf killed under four weeks old, he shall seize the same and cause it to be destroyed or disposed of as provided in the preceding section, subject, however, to the provisions therein contained concerning appeal and the disposal of moneys.

Search warrants for unwholesome food, etc. Public Statutes, c. 58, § 4.

105. When complaint is made on oath to any police, district, or municipal court, or to a magistrate authorized to issue warrants in criminal cases, that the complainant believes that any diseased animals, or any tainted, diseased, corrupted, decayed, or unwholesome meat, fish, vegetables, produce, fruit, or provisions of any kind, or any veal of a calf killed under four weeks old, are kept or concealed in a particular house or place with the intent to kill, sell, or offer the same for sale for food, the court or magistrate, if satisfied there is reasonable cause for such belief, shall issue a warrant to search for such animals or articles, and all such warrants shall be directed and executed as provided in section three of chapter two hundred and twelve of the public statutes. If, upon hearing, said court or magistrate determines that said animals or articles or any of them were kept or concealed for the purposes aforesaid, the same shall be destroyed or disposed of by the inspector, or by any officer designated by the court or magistrate according to the preceding provisions; if the court or magistrate does not so determine, said animals or articles shall be returned to the owner.

Penalty for knowingly selling, etc., unwholesome food. Public Statutes, c. 58, § 5.

106. Whoever knowingly sells, or offers or exposes for sale, or has in his possession with intent to sell for food, any diseased animal, or any tainted, diseased, corrupted, decayed, or unwholesome meat, fish, vegetables, produce, fruit, or provisions of any kind whatever, shall be punished by imprisonment in jail for not more than sixty days, or by fine of not more than one hundred dollars.

Name and place of business of person convicted to be published. Public Statutes, c. 58, § 6.

107. The place where property condemned under this chapter is found, and the name of every person in whose possession it is found, and of every person convicted of an offence under the preceding section, shall be published in two newspapers published in the county in which the property was found or the conviction took place.

This chapter not to be in force unless accepted. Public Statutes, c. 58, § 7.

108. The provisions of this chapter shall not be in force in any city or town unless they are adopted by the city council of such city or by the inhabitants of such town, or unless the provisions of chapter one hundred and eighty of the statutes of the year eighteen hundred and seventy-six have been already so adopted.

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OFFENCES AGAINST THE PUBLIC HEALTH.

Selling corrupt or unwholesome provisions with out notice. Public Statutes, c. 208, § 1.

109. Whoever knowingly sells any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding two hundred dollars.

The gist of the offence under this section consists in the guilty knowledge or evil intent of a party in selling what he knows to be unfit for food. The sale, of itself, is not made criminal; but it is the sale coupled with the knowledge of the diseased state of the thing sold which constitutes the offence.

Commonwealth *v.* Boynton, 12 Cush. 499.

Killing for sale, or selling calf less than four weeks old. Public Statutes, c. 208, § 2.

110. Whoever kills or causes to be killed, for the purpose of sale, any calf less than four weeks old, or knowingly sells, or has in his possession with intent to sell, the meat of any calf killed when less than four weeks old, shall be punished by imprisonment in the jail or house of correction not exceeding six months, or by fine not exceeding two hundred dollars, or by both such imprisonment and fine; and all such meat exposed for sale, or kept with intent to make sale thereof, may be seized and destroyed by any board of health or health officer, or by any sheriff, deputy-sheriff, constable, or police officer.

Where a party is charged with an offence of "killing or causing to be killed, for the purpose of sale, any calf less than four weeks old," it is not necessary to allege in the indictment, or prove, that he knew the calf to be less than four weeks old. The defendant is bound to know the facts and obey the law at his peril.

Under the next clause of this section, the offence is not the killing of the calf, but "*knowingly*" selling, or having in possession with intent to sell, the meat of a calf killed when less than four weeks old; and this language makes the defendant's knowledge essential to be alleged and proved.

The legislature saw fit to make the man who kills, or causes to be killed, a calf for the purpose of sale, at all events punishable if the animal was less than four weeks old; but to punish the man who sells veal, only in case he knows it to have been killed when under four weeks old.

Commonwealth *v.* Raymond, 97 Mass. 567.

Adulterating food. Public Statutes, c. 208, § 3.

See Acts of 1882, c. 263.

111. Whoever fraudulently adulterates, for the purpose of sale, bread or any other substance intended for food, with any substance injurious to health, or knowingly barters, gives away, sells, or has in possession with intent to sell, any substance intended for food, which has been adulterated with any substance injurious to health, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding three hundred dollars; and the articles so adulterated shall be forfeited, and destroyed under the direction of the court.

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Adulterating liquor used for drink, with Indian cockle, etc. Public Statutes, c. 208, § 4.

112. Whoever adulterates, for the purpose of sale, any liquor used or intended for drink, with Indian cockle, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, Brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison not exceeding three years; and the articles so adulterated shall be forfeited.

drugs or medicines. Public Statutes, c. 208, § 5.

113. Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars; and such adulterated drugs and medicines shall be forfeited, and destroyed under the direction of the court.

Persons selling certain poisons to keep record, etc. Purchasers who give false name, etc. Public Statutes, c. 208, § 6.

114. Whoever sells arsenic, strychnine, corrosive sublimate, or prussic acid, without the written prescription of a physician, shall keep a record of the date of such sale, the name of the article, the amount thereof sold, and the name of the person or persons to whom delivered; and for each neglect shall forfeit a sum not exceeding fifty dollars. Whoever purchases deadly poisons as aforesaid, and gives a false or fictitious name to the vendor, shall be punished by fine not exceeding fifty dollars.

Corrupting spring, etc., or injuring aqueduct. Public Statutes, c. 208, § 7.

115. Whoever wilfully or maliciously defiles, corrupts, or makes impure any spring, or other source of water, or reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year.

sources of domestic water-supply. Public Statutes, c. 208, § 8.

116. Whoever wilfully deposits excrement, or foul or decaying matter, in any water used for the purpose of domestic water-supply, or upon the shore thereof within five rods of the water, shall be punished by fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days; and a police officer or constable of a city or town in which such water is wholly or partly situated, acting within the limits of his city or town, and any executive officer or agent of a water board, board of water commissioners, or water company furnishing water for domestic purposes, acting upon the premises of such board or company and not more than five rods from the water, may without a warrant arrest any person found in the act of violating the provisions of this section, and detain him until a complaint can be made against him therefor. But this section shall not be so construed as to interfere with the sewage of a city, town, or public institution, or to pre-

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vent boating, bathing, or fishing, or the enriching of land for agricultural purposes by the owner or occupant thereof.

POLLUTION OF RIVERS AND SOURCES OF WATER-SUPPLY.

Sources of water-supply not to be polluted. Public Statutes, c. 80, § 96.

117. No sewage, drainage, or refuse or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream hereinafter referred to, for domestic use, or render it injurious to health, and no human excrement, shall be discharged into any pond used as a source of water-supply by a city or town, or upon whose banks any filter basin so used is situated, or into any stream so used, or upon whose banks such filter basin is situated, within twenty miles above the point where such supply is taken, or into any feeders of such pond or stream within such twenty miles.

Certain rights not to be impaired. Prohibition not applicable to certain rivers. Public Statutes, c. 80, § 97.

118. The preceding section shall not be construed to destroy or impair rights acquired by legislative grant prior to the first day of July in the year eighteen hundred and seventy-eight, or to destroy or impair prescriptive rights of drainage or discharge, to the extent to which they lawfully existed on that date; and nothing therein contained shall be construed to authorize the pollution of any waters in this commonwealth, in any manner contrary to law; nor shall it be applicable to the Merrimack or Connecticut Rivers, or to so much of the Concord River as lies within the limits of the city of Lowell.

State board to have supervision of sources of water-supply. Public Statutes, c. 80, § 98.

119. The state board shall have the general supervision of all streams and ponds used by a city or town as sources of water-supply, with reference to their purity, together with the waters feeding the same, except the Merrimack, Connecticut, and Concord Rivers; and shall examine the same from time to time, and inquire what pollutions exist and their causes. In case of a violation of any of the above provisions, the state board may appoint a time and place for hearing parties to be affected, and give due notice thereof to such parties, and after such a hearing, if in its judgment the public health requires it, may order any person to desist therefrom, and to remedy the pollution, or to cleanse or purify the polluting substances in such a manner and to such a degree that they shall be no longer deleterious to the public health, before being cast or allowed to flow into the waters thereby polluted. Upon the application of a city or town to the state board, alleging the pollution of its water-supply by the violation of any of the above provisions, the state board shall give notice and grant a hearing as aforesaid, and upon proof of such violation shall issue the order or orders already mentioned in this section.

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The action of the board may be either the result of its own observations and discoveries in the investigation called for by the statute, or it may be taken in consequence of an application by a city or town.

Pebbles *v.* City of Boston, 131 Mass.

Supreme judicial court may enforce orders of state board. Public Statutes, c. 80, § 99.

120. The supreme judicial court in term time or vacation may issue an injunction to enforce such orders of the state board.

Orders to be served on parties. Public Statutes, c. 80, § 100.

121. Such orders of the state board shall be served upon parties found to have violated any of the provisions hereof; and any party aggrieved thereby shall have the right of appeal to a jury, and be subject to the provisions of sections eighty-eight and ninety, chapter eighty, Public Statutes. During the pendency of the appeal, the pollution against which the order has issued shall not be continued contrary to the order of the state board.

It is clear from the above provision that the proceedings instituted by the person aggrieved by an order of the board must begin with an appeal from the order. They are not in the nature of independent original proceedings, but have their foundation in an appeal. The action of the board of health, whether taken on its own motion as the result of its voluntary investigations or pursuant to an application by a city or town, is judicial in its character; and an order made by the board, and not appealed from, has the binding force and effect of a judgment by a tribunal of competent jurisdiction. In the absence of any thing in the statutes to indicate that appeals from orders of the state board are to be taken in any other way than that which has become familiar in analogous cases before other tribunals, it must be held that they are to be taken in substantially the same way with such appeals, and that the right to appeal can be preserved only by informing the board in some definite and distinct manner that an appeal is taken. It cannot be supposed that the legislature intended that an appeal may be taken simply by making a petition to the superior court or one of its judges for a jury, while the tribunal appealed from is left in ignorance of the appeal to proceed, if it sees fit, through the proper application to the supreme court, for the enforcement of its order, thus appealed from. Accordingly, where the party appealing failed to enter his appeal with the board, the court held that he was not entitled to a jury.

Pebbles *v.* City of Boston, 131 Mass.

Penalty for driving horse on ice of pond used for water-supply, etc. Public Statutes, c. 80, § 101.

122. Whoever drives a horse on the ice on a pond, the water of which is used for the purpose of domestic water-supply for a city or town, shall be punished by fine not exceeding fifty dollars, or imprisonment not exceeding thirty days.

Exception to above. Public Statutes, c. 80, § 102.

123. The preceding section shall not apply to persons engaged in cutting or harvesting ice from such ponds, or in hauling logs, wood, or lumber.

Water boards, etc., to make triennial returns to state board. Public Statutes, c. 80, § 103.

124. Water boards, water commissioners, and water companies making use, as a source of water-supply, of any pond, stream, reservoir, or well, within the commonwealth, and distributing the waters thereof for public, domestic, and general uses, shall make returns to the state board on or before the first day of November

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in every third year, beginning with the year eighteen hundred and eighty-two, of the facts hereinafter enumerated: *provided*, that the expense incurred by any such board, commissioners, or company, shall not exceed fifty dollars. And the state board shall publish triennially, in its report to the legislature, the returns received, arranged by counties separately, and those from each county alphabetically.

Form of return. Public Statutes, c. 80, § 104.

125. Each of such water boards, commissioners, and companies shall state in the proper places on the blanks which the state board shall, on application, furnish for the purpose, —

1. Its name, charter, or other legal basis, and place of business.
2. The source or sources of its water-supply, and the name, if any, and location of each.
3. The superficial area of its water-surface, if pond, reservoir, or large well.
4. The area of water-shed supplying such source or sources.
5. The general geological and topographical character of the water-shed.
6. The estimated capacity of each such source by average daily flow.
7. The estimated capacity of each such source by minimum daily flow.
8. Whether the water-shed is also wholly or in part that of other ponds, streams, or reservoirs, besides that used by the party making return; and if so, to what extent.
9. Whether or not the source employed by the party making return is used jointly by some other party for a water-source; and if so, by whom.
10. Whether there are other sources within ten miles, not already appropriated by law, that could be availed of in connection with the source or sources now enjoyed by the party making return; and if so, what, and their location, area, water-shed, and the means necessary to connect, with the distance from present source, and from territory to be supplied.
11. What danger of contamination the waters at present held are liable to.
12. Whether or not an analysis has been made of the water at present used, and the results of any such; by whom, and where.
13. Whether the waters at present used have been stocked with fish; if so, to what extent, by whom, and where.
14. What up to date has been the cost of the water-works in use, including rights and lands taken, and all damages paid; stating cost of water-rights separately, and to whom paid.
15. Whether the storage capacity of the present source can be increased, and at what probable cost, exclusive of damage by flowing, and at what damage to private parties or corporations.
16. Whether any town, village, or city discharges its sewers or drains into the source used by the returning party, or their tributaries.
17. The population of the town, city, or village so discharging its sewers or drains into said source, and the character of its manufactures.
18. The apparent results of such sewage.
19. The average daily consumption for the year of the population supplied by the party making return.
20. The per centum used by families.
21. The average consumption per family, per day.
22. The probable increase of demand, as near as can be estimated for the next year.

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23. The water rates established.

24. The system of distribution, whether by gravity, stand-pipe, direct pumping, reservoir, or otherwise.

25. The condition of water debt and sinking-fund.

26. How the effluent water is now got rid of.

27. Into what stream or body of water it finally flows.

28. What protection against impurity of present source not now provided is desired.

29. What additional expense such protection would involve, and to whom.

State board to furnish blanks. Penalty for neglect to make returns. State board to prosecute. Public Statutes, c. 80, § 105.

126. The state board shall, on application from the parties who are required to make said returns, furnish the requisite blanks therefor; and any water board, commissioners, or company required to make said returns shall for every neglect or failure so to do forfeit fifty dollars to the use of the local board of health, or the proper officers acting as such, of the city or town in which such delinquent has its principal office. And the state board shall prosecute, by an action of tort in the name of the commonwealth, for the recovery of the penalty or forfeit herein imposed.

GENERAL PROVISION.

Chapter extends to cities. Public Statutes, c. 80, § 106.

127. The provisions extend to cities so far as the same are not inconsistent with their several charters or acts in amendment thereof.

CEMETERIES AND BURIALS.

Lots to be indivisible, but inheritable. Representative of, how designated. Public Statutes, c. 82, § 3.

128. Lots in cemeteries shall be held indivisible, and upon the decease of a proprietor, his heirs at law, or the devisees of such lot if devised, shall succeed to his privileges. If there is more than one heir or devisee, they shall within nine months from such decease designate in writing to the clerk of the corporation which of their number shall represent the lot; and on their failure so to designate, the board of trustees or directors of the corporation shall enter of record which of said heirs or devisees shall represent the lot while such failure continues.

Provisions of preceding section to apply to tombs in public cemeteries in cities, etc. Public Statutes, c. 82, § 4.

129. The preceding section shall apply to all tombs in public cemeteries in cities, and the boards of health in cities shall exercise, in regard to such tombs, the powers granted by said section to trustees or directors of cemetery corporations.

Boards of health may make regulations. Public Statutes, c. 82, § 19.

130. Boards of health of cities and towns may make all regulations which they judge necessary concerning burial-grounds and interments within their respective limits; may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial; and may establish penalties not exceeding one hundred dollars for any breach of such regulations.

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The powers given to boards of health are large and general to make regulations for the interment of the dead and respecting burying-grounds.

Withington *v.* Inhabitants of Harvard, 8 Cush. 68.

This section is not confined in its operation to acts done within the burial-grounds. The word "interments" properly includes and describes the removal of the bodies of deceased persons for the purpose of burial.

That this necessary duty shall be performed, especially when undertaken for hire, by suitable and trustworthy persons, and that the moving of dead bodies through the public streets shall be conducted with decency and safety, are obviously matters proper for municipal regulation, and which, as well as the mode of burial, may concern the public health to no slight extent.

Commonwealth *v.* Goodrich, 13 Allen, 546.

The board of health of a city may establish a regulation prohibiting any person, unless appointed an undertaker or otherwise authorized by the board of health, from moving from any house or other place in the city to any place of burial the body of any deceased person, and making it the duty of undertakers to attend funerals when required, and to collect and pay over the burial fees, and requiring, further, each undertaker to give bonds in the sum of two hundred dollars.

The refusal or neglect of a person appointed an undertaker to give the bond required by the regulation would justify the revocation of his appointment without any previous notice to him.

Commonwealth *v.* Goodrich, 13 Allen, 546.

Boards of health to give notice of regulations. Public Statutes, c. 82, § 20.

131. Notice of such regulations shall be given by publishing the same in some newspaper of the city or town, or, if there is no such newspaper, by posting a copy in some public place therein; which shall be deemed legal notice to all persons.

Penalty for interments in violation of section eighteen. Public Statutes, c. 82, § 21.

132. For every interment in violation of section eighteen, chapter eighty-two of the Public Statutes, in a city or town in which the notice prescribed in the preceding section has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

Sect. 18 of chap. 82, Public Statutes, provides that, "Except in the case of the erection or use of a tomb on private land, for the exclusive use of the family of the owner, no land other than that already so used or appropriated shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same is situated."

Notice to be given before closing tombs, etc., by order of board. Public Statutes, c. 82, § 22.

133. Before a tomb, burial-ground, or cemetery is closed by order of such board of health for a time longer than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if so many there are, of the proprietors of such burial-ground or cemetery, and notice shall also be published two successive weeks at least preceding such hearing, in two newspapers, if so many there are, published in the county.

Appeal from order of board.

134. The owner of a tomb aggrieved by the order of the board

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Public Statutes, c. 82, § 23.

of health closing a tomb, burial-ground, or cemetery, may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to the entry thereof. But the order of the board shall remain in force until a decision is had on the appeal.

to be tried by jury. Costs. Public Statutes, c. 82, § 24.

135. Appeals shall be tried in regular course before a jury, and if the jury find that the tomb, burial-ground, or cemetery so closed was not a nuisance nor injurious to the public health at the time of the order, the court shall rescind such order so far as it affects such tomb, burial-ground, or cemetery, and execution for the costs of the appeal shall issue in favor of the appellant against the city or town in which the same was situated. But if the order is sustained, execution shall issue for double costs against the appellant in favor of the board of health for the use of the city or town.

Interments in tombs in cities may be forbidden, when and how. Public Statutes, c. 82, § 25.

136. The city council of a city may, upon report of the board of health thereof that the public health requires it, and after public notice and hearing in the manner hereinafter provided, forbid future interment in any tomb within the city.

Tombs to be specified; notice; hearing. Public Statutes, c. 82, § 26.

137. Such report shall specify the tomb or tombs to which it refers, and name the owner thereof, if known; and thereupon the city clerk shall give notice to such owners as are known and reside within the commonwealth, and shall likewise publish a notice at least twice a week for four consecutive weeks in two or more newspapers published in the city, or in the county wherein said city is situate, reciting such report, and notifying all parties interested in the premises to appear before a joint committee of the city council at a time not less than two nor more than three months from the last publication of said notice, and show cause why such tomb or tombs should not be closed. After such hearing the city council may, upon a vote of both branches thereof and with the approval of the mayor, declare said tomb or tombs to be closed, and no interments shall thereafter be permitted therein.

Notice to repair tombs may be given, when and how, etc. Public Statutes, c. 82, § 27.

138. When, in the judgment of the board of health of a city, a tomb therein needs repair, such board shall give notice thereof to the owner, or any one of the owners thereof, requiring said tomb to be put in a proper state of repair within three months from the date thereof; and if the owner of such tomb is unknown, the board may publish notice in the manner provided in the preceding section, requiring the owner to repair such tomb within the time above mentioned; and if the owner does not so repair such tomb, then the board may enter upon the same and make the repairs needed, at the expense of the city. If the public health requires immediate action, the board may make the necessary repairs, the

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cost of which shall be refunded upon demand by the owner of such tomb. If the city incurs any expense in regard to a tomb in the manner before specified, such tomb shall be held by said board, and no further use shall be made thereof until the owner pays such expense and interest thereon; and after twenty years' possession under this act for non-repairs, all interest and right of burial in such tomb shall vest in the city in which the same is situate.

Appeal from orders under three preceding sections. Public Statutes, c. 82, § 28.

139. Any person aggrieved by the action of the city council or board of health under the three preceding sections may appeal therefrom in the manner provided by sections twenty-three and twenty-four, chapter eighty-two, Public Statutes.

Burial or removal of body not permitted until certificate has been given. Public Statutes, c. 32, § 5.

140. No human body shall be buried or removed from any city or town until a proper certificate has been given by the clerk or registrar to the undertaker, sexton, or other person performing the burial or removing the body. Such certificate shall state that the facts required by chapter thirty-two of the Public Statutes have been returned and recorded; and no clerk or registrar shall give such certificate or burial permit until the certificate of the cause of death has been obtained from the physician, if any, in attendance at the last sickness of the deceased and placed in the hands of said clerk or registrar; and in cities and towns where there are boards of health, the certificate of the cause of death shall also be approved by such board before a permit to bury is given by the registrar or clerk. Upon application, the chairman of the board of health, or any physician employed by any city or town for such purpose, shall sign the certificate of the cause of death to the best of his knowledge and belief, if there has been no physician in attendance. He shall also sign such certificate, upon application, in case of death by dangerous contagious disease, or in any other event when the certificate of the attending physician cannot for good and sufficient reasons be early enough obtained. In case of death by violence, the medical examiner attending shall furnish the requisite medical certificate. Any person violating the provisions of this section shall be punished by fine not exceeding twenty-five dollars.

Undertakers to be licensed by board of health. Public Statutes, c. 32, § 6.

141. The boards of health of towns and the mayor and aldermen of cities shall, on or before the first day of July in each year, license a suitable number of undertakers to take charge of the funeral rites preliminary to the interment of a human body.

Violation of sepulture. Public Statutes, c. 207, § 47.

142. Whoever, not being authorized by the board of health, overseers of the poor, directors of a workhouse, or mayor and aldermen or selectmen of a city or town, or by the board of directors for public institutions or overseers of the poor of the city of

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Boston, wilfully digs up, disinters, removes, or conveys away a human body or the remains thereof, or knowingly aids in such disinterment, removal, or conveying away, and whoever is accessory thereto either before or after the fact, shall be punished by imprisonment in the state prison or jail not exceeding three years or by fine not exceeding two thousand dollars.

The removal of a dead body is not an offence within the meaning of the above statute, unless it is removed with the intent to use it or dispose of it for the purpose of dissection.

Commonwealth *v.* Slack, 19 Pick. 306.

CONTAGIOUS DISEASES AMONG CATTLE.

Animals with contagious diseases to be isolated, etc. Public Statutes, c. 90, § 1.

143. The mayor and aldermen of cities and the selectmen of towns, in case of the existence in this commonwealth of the disease called pleuro-pneumonia among cattle, or farcy or glanders among horses, or any other contagious or infectious disease among domestic animals, shall cause the animals in their respective cities and towns, which are infected, or which have been exposed to infection, to be secured or collected in some suitable place or places within their cities or towns, and kept isolated; and, when taken from the possession of their owners, one-fifth of the expense of their maintenance shall be paid by the city or town wherein the animal is kept, and four-fifths by the commonwealth; such isolation to continue so long as the existence of such disease or other circumstances may render it necessary.

may be killed Public Statutes c. 90, § 2.

144. The mayor and aldermen and selectmen respectively, when any such animal is adjudged by a veterinary surgeon or physician by them selected to be infected with any contagious disease, may in their discretion order such diseased animal to be forthwith killed and buried at the expense of such city or town.

their value to be appraised, and how paid. Public Statutes, c. 90, § 3.

145. They may cause all such animals to be appraised by three competent and disinterested men under oath, at the value thereof at the time of the appraisement, and the amount of the appraisement shall be paid as provided above.

Animals may be kept isolated. Public Statutes, c. 90, § 4.

146. They may, within their respective cities and towns, prohibit the departure of animals from any enclosure, or exclude animals therefrom.

Passage of animals through towns may be regulated. Public Statutes, c. 90, § 5.

147. They make regulations, in writing, to regulate or prohibit the passage from, to, or through their respective cities or towns, or from place to place within the same, of any cattle or other domestic animals, and may arrest and detain, at the cost of the owners thereof, all animals found passing in violation of such regulations, and may take all other necessary measures for the enforcement of such prohibition, and also for preventing the spread

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of any disease among the animals to their respective cities and towns, and the immediate vicinity thereof.

148. Such regulations shall be recorded upon the records of their cities and towns respectively, and shall be published in such cities and towns in such manner as may be provided in such regulations.

Regulations to be recorded, etc. Public Statutes, c. 90, § 6.

149. They may cause every animal infected with any such disease, or which has been exposed thereto, to be forthwith branded upon the rump with the letter P; and no animal so branded shall be sold or disposed of except with the knowledge and consent of such mayor and aldermen and selectmen. A person who, without such knowledge and consent, sells or disposes of an animal so branded, or sells or disposes of an animal known to be affected with such disease, or to have been exposed thereto within one year previous to such sale or disposal, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Animals may be branded. Penalty for selling. Public Statutes, c. 90, § 7.

150. Any person disobeying the orders of the mayor and aldermen or selectmen, made in conformity with the preceding provisions, or driving or transporting any animals contrary to the regulations made, recorded, and published as aforesaid, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Penalty for violation of rules, etc. Public Statutes, c. 90, § 8.

151. Whoever knows or has reason to suspect the existence of any such disease among the animals in his possession or under his care shall forthwith give notice thereof to the mayor and aldermen of the city or selectmen of the town where such animals are kept, and for failure so to do shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Owners suspecting disease to give notice. Penalty. Public Statutes, c. 90, § 9.

152. A city or town whose officers neglect or refuse to carry into effect the preceding provisions shall forfeit a sum not exceeding five hundred dollars for each day's neglect.

Penalty on towns for neglect. Public Statutes, c. 90, § 10.

153. The mayor and aldermen of cities and selectmen of towns, when in their judgment it is necessary to carry into effect the purposes of this chapter, may, within their respective cities and towns, take and hold, for a term not exceeding one year, any land, without buildings other than barns thereon, upon which to enclose and isolate any animals; and they shall cause the damages sustained by the owner in consequence of such taking and holding to be appraised by the assessors of the city or town wherein the lands so taken are situated; and they shall further cause a description of such land, setting forth the boundaries thereof, and the area as nearly as may be estimated, together with said appraisement, to be entered on the records of the city or town. The amount of said appraisement shall be paid as before provided, in such

Lands may be taken; damages; appeal. Public Statutes, c. 90, § 11.

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sums and at such times as the mayor and aldermen or selectmen respectively may order. If the owner of land so taken is dissatisfied with said appraisement, he may by action of contract recover of the city or town wherein the lands lie a fair compensation for the damages sustained by him; but no costs shall be taxed, unless the damages recovered in such action, exclusive of interest, exceed said appraisement. And the commonwealth shall reimburse to the city or town four-fifths of any sum recovered of it in any such action.

Cattle commissioners may be appointed. Public Statutes, c. 90, § 12.

154. The governor, with the advice and consent of the council, may appoint a board of cattle commissioners of not more than three members, when in his judgment the public safety may require it, and may terminate their commissions when in his judgment the public safety may permit it. The compensation of such commissioners shall not exceed four dollars per day for actual service, in addition to their travelling expenses necessarily incurred.

Regulations by commissioners to supersede those by selectmen. Public Statutes, c. 90, § 13.

155. When such commissioners make and publish any regulations concerning the extirpation, cure, or treatment of animals infected with or which have been exposed to any contagious disease, such regulations shall supersede those made by mayors and aldermen and selectmen; and mayors and aldermen and selectmen shall carry out and enforce all orders and directions of the commissioners to them directed.

Hospital may be established. Public Statutes, c. 90, § 14.

156. Such commissioners shall have all the power and authority herein conferred upon mayors and aldermen and selectmen; and, in addition, may establish a hospital or quarantine with proper accommodations, wherein any cattle selected by them may be detained and treated by veterinary surgeons or physicians. And for this purpose the commissioners may take any land and buildings in the manner before provided.

Selectmen to notify commissioners. Public Statutes, c. 90, § 15.

157. Mayors and aldermen and selectmen, within twenty-four hours after they have notice that any domestic animals in their respective cities and towns are infected with or have been exposed to any such disease, shall give notice thereof in writing to the commissioners.

Commissioners may make regulations as to cattle. Public Statutes, c. 90, § 16.

158. The commissioners may make all necessary regulations for the treatment, cure, and extirpation of such disease, and may direct mayors and aldermen and selectmen respectively to enforce and carry into effect all such regulations as may from time to time be made for that end; and any such officer who refuses or neglects to enforce and carry out any regulation of the commissioners shall be punished by fine not exceeding five hundred dollars for every such offence.

May cause infected animals to be killed.

159. The commissioners, when in their judgment the public good requires it, may cause to be killed and buried any domestic

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animals which are infected with or have been exposed to such disease; and except as provided in the following section, shall cause such animals to be appraised in the manner provided above, and the appraised value of such animals shall be paid, one-fifth by the cities or towns in which such animals were kept, and the remainder by the commonwealth. Public Statutes, c. 90, § 17.

160. In all cases of farcy or glanders, the commissioners, having condemned the animal infected therewith, shall cause such animal to be killed, without an appraisement, but may pay the owner an equitable sum for the killing and burial thereof. Farcy and glanders. Public Statutes, c. 90, § 18.

161. A person who fails to comply with a regulation made or an order given by the commissioners shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year. Penalty. Public Statutes, c. 90, § 19.

162. Prosecutions under the preceding section may be maintained in any county. Prosecutions where maintained. Public Statutes, c. 90, § 20.

163. All appraisements made shall be in writing and signed by the appraisers and certified by the mayors and aldermen or selectmen or commissioners respectively, to the governor and council and to the treasurers of the several cities and towns wherein the cattle appraised were kept. Appraisements. Public Statutes, c. 90, § 21.

164. The commissioners may examine under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination or danger of dissemination of diseases among domestic animals; and for this purpose shall have all the powers vested in justices of the peace to take depositions and to compel witnesses to attend and testify by chapter one hundred and sixty-nine of the Public Statutes. All costs and expenses incurred in procuring the attendance of such witnesses shall be allowed and paid to the commissioners from the treasury of the commonwealth, upon being certified to and approved by the governor and council. Commissioners may examine persons. Public Statutes, c. 90, § 22.

165. Whenever animals exposed to contagious diseases are killed by order of the commissioners, and upon a post-mortem examination are found to have been entirely free from disease, the commissioners shall cause the same to be sold under their direction, first giving to the purchaser notice of the facts, and if the said purchaser or any other person shall sell said slaughtered animals or any part thereof, he shall in like manner give notice to the parties to whom such sales are made; and the proceeds of the sales made by order of the commissioners shall be applied in payment of the appraised value of said animals. May sell animals killed when not diseased. Public Statutes, c. 90, § 23.

166. Whoever violates any of the provisions of the preceding section shall be punished by fine not exceeding one hundred dollars and the costs of prosecution. Penalty. Public Statutes, c. 90, § 24.

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Commissioners to keep record and make report. Public Statutes, c. 90, § 25.

167. Cattle commissioners, now or hereafter appointed, shall keep a full record of their doings, and report the same to the legislature on or before the tenth day of January in each year, unless sooner required by the governor; and an abstract of the same shall be printed in the annual report of the state board of agriculture.

[The above provisions of law are to be found in the Public Statutes of 1881, which took effect Feb. 1, 1882. The statutes which follow were enacted by the legislature of 1882, or were not included in the above revision.]

AN ACT RELATING TO THE ADULTERATION OF FOOD AND DRUGS.

[Chap. 263, 1882.]

Be it enacted, etc., as follows:

SECTION 1. No person shall, within this Commonwealth, manufacture for sale, offer for sale or sell any drug or article of food which is adulterated within the meaning of this act.

SECT. 2. The term "drug" as used in this act shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food" as used herein shall include all articles used for food or drink by man.

SECT. 3. An article shall be deemed to be adulterated within the meaning of this act, —

(*a.*) In the case of drugs, — (1.) If, when sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality or purity laid down therein; (2.) If, when sold under or by a name not recognized in the United States Pharmacopœia but which is found in some other pharmacopœia, or other standard work on *materia medica*, it differs materially from the standard of strength, quality or purity laid down in such work; (3.) If its strength or purity falls below the professed standard under which it is sold:

(*b.*) In the case of food, — (1.) If any substance or substances have been mixed with it so as to reduce, or lower, or injuriously affect its quality or strength; (2.) If any inferior or cheaper substance or substances have been substituted wholly or in part for it; (3.) If any valuable constituent has been wholly or in part abstracted from it; (4.) If it is an imitation of, or is sold under the name of, another article; (5.) If it consists wholly or in part of a diseased, decomposed, putrid or rotten animal or vegetable substance, whether manufactured or not; or, in the case of milk, if it is the produce of a diseased animal; (6.) If it is colored,

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coated, polished or powdered, whereby damage is concealed, or if it is made to appear better or of greater value than it really is; (7.) If it contains any added poisonous ingredient, or any ingredient which may render it injurious to the health of a person consuming it.

The state board of health, lunacy and charity may from time to time declare certain articles or preparations to be exempt from the provisions of this act; and the provisions hereof shall not apply to mixtures or compounds recognized as ordinary articles of food, provided that the same are not injurious to health, and are distinctly labelled as mixtures or compounds.

SECT. 4. The state board of health, lunacy and charity shall prepare and publish from time to time lists of the articles, mixtures or compounds declared to be exempt from the provisions of this act, in accordance with the preceding section. The said board shall also from time to time fix the limits of variability permissible in any article of food, or any drug, or compound, the standard of which is not established by any national pharmacopœia.

SECT. 5. The state board of health, lunacy and charity shall take cognizance of the interests of the public health relating to the sale of drugs and food and the adulteration of the same, and shall make all necessary investigations and inquiries in reference thereto, and for these purposes may appoint inspectors, analysts and chemists, who shall be subject to its supervision and removal.

Within thirty days after the passage of this act the said board shall adopt such measures as it may deem necessary to facilitate the enforcement hereof, and shall prepare rules and regulations with regard to the proper methods of collecting and examining drugs and articles of food. Said board may expend annually an amount not exceeding three thousand dollars for the purpose of carrying out the provisions of this act.

SECT. 6. Every person offering or exposing for sale, or delivering to a purchaser, any drug or article of food included in the provisions of this act, shall furnish to any analyst or other officer or agent appointed hereunder, who shall apply to him for the purpose and shall tender him the value of the same, a sample sufficient for the purpose of the analysis of any such drug or article of food which is in his possession.

SECT. 7. Whoever hinders, obstructs, or in any way interferes with any inspector, analyst, or other officer appointed hereunder in the performance of his duty, and whoever violates any of the provisions of this act, shall be punished by a fine not exceeding fifty dollars for the first offence and not exceeding one hundred dollars or each subsequent offence.

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SECT. 8. This act shall take effect at the expiration of ninety days after its passage. [*Approved May 26, 1882.*

RESOLVE IN FAVOR OF THE STATE PRISON AT CONCORD.

State prison at Concord.

Resolved, That there be allowed and paid out of the treasury of the Commonwealth a sum not exceeding six thousand dollars, to be expended under the approval of the commissioners of prisons,

Ventilation and sewage.

for the ventilation of the state prison buildings, and for the disposition of the sewage in the prison precincts. The board of health, lunacy and charity, whenever requested so to do by the selectmen of the town of Concord, shall ascertain whether the sewage of the state prison has been purified or cleansed in a manner satisfactory to said board. If upon investigation they shall find that it has not been so purified or cleansed, they shall forthwith notify the board of commissioners of prisons to that effect, and said board of commissioners shall thereupon forthwith proceed to purify and cleanse said sewage in such manner as said board of health, lunacy and charity shall in writing approve, or so dispose of the same that no part thereof shall enter the Assabet River.

[*Approved May 12, 1881.*

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PART SECOND.

THE LUNACY LAWS.

[Public Statutes, Chap. 87.]

OF LUNACY AND INSTITUTIONS FOR LUNATICS.

GENERAL DUTIES OF STATE BOARD.

SECTION

1. State board to be commissioners of lunacy, etc.

STATE LUNATIC HOSPITALS.

2. Titles of hospitals.
3. Lands of hospitals not to be taken for streets, etc., unless, etc.
4. Government of each hospital vested in five trustees. Appointment and term of office.
5. Trustees to be a corporation, to take and hold grants, etc.
6. general powers and duties.
7. to make by-laws, appoint officers, fix salaries, etc.
8. Salaries of officers, how paid.
9. Visitation of hospitals; annual meeting; reports.
10. Treasurer's books.

COMMITMENTS TO HOSPITALS.

11. Judges may commit insane persons to state hospitals.
12. No person to be committed to any hospital without order of judge, except, etc. What the order shall state.
13. Certificate of two physicians.
14. On application for commitment to state hospital, notice to be given to selectmen, etc.
15. In all cases, statement to be filed with judge, etc.
16. Judge may cause alleged lunatic to be brought before him.
17. Jury may be summoned.
18. How jury to be selected and impanelled.
19. Judge to preside; verdict.
20. How deficiency in jury may be suppl

SECTION

21. Fees of officers, jurors, and witnesses.
22. Judge to keep docket, original application, etc.
23. Fees of judges, physicians, and officers.
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27. Bond in such cases.
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36. Patients shall be allowed to write letters to certain persons; shall be furnished with materials for correspondence; boxes for letters, etc.

ASYLUM FOR CHRONIC INSANE.

37. Asylum for chronic insane at Worcester.

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55. Trustees of Massachusetts school for idiotic, etc., youth to be appointed.
56. Five thousand dollars a year to be paid to school by the state, on certain conditions.

GENERAL DUTIES OF STATE BOARD.

State board to be commissioners of lunacy, etc. 1879, 291, § 5.

SECTION 1. The state board of health, lunacy, and charity shall act as commissioners of lunacy, with power to investigate the question of the insanity and condition of any person committed to any lunatic hospital or asylum, public or private, or restrained of his liberty by reason of alleged insanity, at any place within this commonwealth; and shall discharge any person so committed or restrained, if in its opinion such person is not insane, or can be cared for after such discharge without danger to others, and with benefit to himself.

[For other powers of the State Board, see chap. 79, Public Statutes.]

STATE LUNATIC HOSPITALS.

Titles of hospitals. 1862, 223, § 1. 1877, 252, § 1.

SECT. 2. The titles of the state lunatic hospitals shall be severally, the Worcester Lunatic Hospital, the Taunton Lunatic Hospital, the Northampton Lunatic Hospital, and the Danvers Lunatic Hospital.

Lands of hospitals not to be taken for streets, etc., unless, etc. 1862, 223, § 2.

SECT. 3. The lands now holden and which may hereafter be holden by the trustees of any state lunatic hospital in trust for the commonwealth, for the use of the institution of which they are trustees, shall not be taken for a street, highway, or railroad, without leave of the legislature specially obtained.

Government of each hospital vested in five trustees. Appointment

SECT. 4. The government of each of the state lunatic hospitals at Worcester, Taunton, Northampton, and Danvers, shall be vested in a board of five trustees, appointed and commissioned by the

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governor with the advice and consent of the council, subject to removal only for sufficient cause. The trustees now in office shall continue to hold their offices until the terms thereof expire according to the provisions of this section. On the first Wednesday of February in each year the term of office of the senior member in each board, as they stand arranged on the list of their appointments, shall terminate, and the name of the person appointed to fill the vacancy shall be placed at the bottom of the list, and other vacancies may at any time be filled, and the names of the persons appointed substituted in the list for the remainder of the vacant terms.

and term of office. G. S. 73, § 1. 1877, 252, § 1.

SECT. 5. The trustees of each hospital shall be a corporation for the purpose of taking and holding, to them and their successors, in trust for the commonwealth, any grant or devise of lands, and any donation or bequest of money or other personal property, made for the use of the institution of which they are trustees, and for the purpose of preserving and investing the proceeds thereof in notes or bonds secured by good and sufficient mortgages or other securities, with all the powers necessary to carry said purposes into effect.

Trustees to be a corporation, to take and hold grants, etc. G. S. 73, § 2.

SECT. 6. They shall take charge of the general interests of the institution and see that its affairs are conducted according to the requirements of the legislature and the by-laws and regulations which the board shall establish for the internal government and economy thereof; and they shall be reimbursed all expenses incurred in the discharge of their official duties.

general powers and duties. G. S. 73, § 3.

SECT. 7. They shall establish by-laws and regulations, with suitable penalties, for the internal government and economy of the institution; shall appoint a superintendent who shall be a physician and constantly reside at the hospital; and a treasurer who shall give bond for the faithful discharge of his duties; shall appoint, or make provision in the by-laws for appointing, such officers as in their opinion may be necessary for conducting efficiently and economically the business of the institution; and shall determine, subject to the approval of the governor and council, the salaries of all the officers. All their appointments shall be made in such manner, with such restrictions, and for such terms of time, as the by-laws may prescribe.

to make by-laws, appoint officers, fix salaries, etc. G. S. 73, § 4.

SECT. 8. The salaries of the superintendents, assistant physicians, stewards, and matrons of the state lunatic hospitals, shall be paid quarterly from the current receipts of the several hospitals.

Salaries of officers, how paid. G. S. 73, § 5.

SECT. 9. There shall be thorough visitations of each hospital by two of the trustees thereof monthly, and by a majority of them quarterly, and by the whole board semi-annually, at each of

Visitation of hospitals, annual meeting, reports. G. S. 73, § 6.

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which a written account of the state of the institution shall be drawn up, which shall be presented at the annual meeting to be held between the first and fifteenth days of October. At the annual meeting a full and detailed report shall be made, exhibiting a particular statement of the condition of the hospital and all its concerns, with a list of the salaried officers and their salaries, and in a tabular form, under the heads specified in section seven of chapter seventy-nine, the value of the stock and supplies, to be laid before the governor and council on or before the fifteenth day of October, for the use of the government; and at the same meeting the treasurer shall present to the trustees his annual report on the finances of the institution; both of which reports shall be made up to the thirtieth day of September inclusive. The trustees shall audit the report of the treasurer, and transmit it with their annual report to the governor and council.

Treasurer's books. G. S. 73, § 7.

SECT. 10. The accounts and books of the treasurer shall at all times be open to the inspection of the trustees.

COMMITMENTS TO HOSPITALS.

Judges may commit insane persons to state hospitals. 1862, 223, § 3. 1879, 195, § 1.

SECT. 11. A judge of the supreme judicial court or superior court, in any county where he may be, and a judge of the probate court, or of a police, district, or municipal court, within his county, may commit to either of the state lunatic hospitals any insane person, then residing or being in said county, who in his opinion is a proper subject for its treatment or custody.

No person to be committed to any hospital without order of judge, except, etc. What the order shall state. 1862, 223, § 3. 1879, 195, § 2. 1880, 250, § 6. 11 Gray, 107. 111 Mass. 308.

SECT. 12. Except when otherwise specially provided, no person shall be committed to a lunatic hospital, asylum, or other receptacle for the insane, public or private, without an order or certificate therefor, signed by one of the judges named in the preceding section, said person residing or being within the county as therein provided. Such order or certificate shall state that the judge finds that the person committed is insane, and is a fit person for treatment in an insane asylum. And said judge shall see and examine the person alleged to be insane, or state in his final order the reason why it was not deemed necessary or advisable to do so. The hearing, except when a jury is summoned, shall be at such place as the judge shall appoint. In all cases the judge shall certify in what place the lunatic resided at the time of his commitment; or if the confinement is ordered by a court, the judge shall certify in what place the lunatic resided at the time of the arrest in pursuance of which he was held to answer before such court; and such certificate shall, for the purposes of the preceding section, be conclusive evidence of his residence.

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Certificate of two physicians. 1879, 195, § 3.

SECT. 13. No person shall be so committed, unless in addition to the oral testimony there has been filed with the judge a certificate signed by two physicians, each of whom is a graduate of some legally organized medical college, and has practised three years in the state, and neither of whom is connected with any hospital or other establishment for treatment of the insane. Each must have personally examined the person alleged to be insane within five days of signing the certificate; and each shall certify that in his opinion said person is insane and a proper subject for treatment in an insane hospital; and shall specify the facts on which his opinion is founded. A copy of the certificate, attested by the judge, shall be delivered by the officer or other person making the commitment, to the superintendent of the hospital or other place of commitment, and shall be filed and kept with the order.

On application for commitment to state hospital notice to be given to selectmen, etc. 1862, 223, § 4.

SECT. 14. A person applying for the commitment or for the admission of a lunatic to a state lunatic hospital, under the provisions of this chapter, shall first give notice in writing to the mayor, or one or more of the selectmen, of the place where the lunatic resides, of his intention to make such application; and satisfactory evidence that such notice has been given shall be produced to the judge in cases of commitment.

In all cases, statement to be filed with judge, etc. 1862, 223, § 5. 1865, 268, § 2.

SECT. 15. Upon every application for the commitment or admission of an insane person to a hospital or asylum for the insane, there shall be filed with the application, or within ten days after the commitment or admission, a statement in respect to such person, showing as nearly as can be ascertained his age, birthplace, civil condition, and occupation; the supposed cause and the duration and character of his disease, whether mild, violent, dangerous, homicidal, suicidal, paralytic, or epileptic; the previous or present existence of insanity in the person or his family; his habits in regard to temperance; whether he has been in any lunatic hospital, and if so what one, when, and how long; and, if the patient is a woman, whether she has borne children, and, if so, what time has elapsed since the birth of the youngest; the names and address of his father, mother, children, brothers, sisters, or other next of kin, not exceeding ten in number, and over eighteen years of age, when the names and address of such relatives are known by the person or persons making such application, together with any facts showing whether he has or has not a settlement, and if he has a settlement, in what place; and if the applicant is unable to state any of the above particulars, he shall state his inability to do so. The statement, or a copy thereof, shall be transmitted to the superintendent of the hospital or asylum, to be filed with the order of commitment,

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or the application for admission. The superintendent, shall, within two days from the time of the admission or commitment of an insane person, send, or cause to be sent, notice of said commitment in writing, by mail, postage prepaid, to each of said relatives, and to any other two persons whom the person committed shall designate.

Judge may cause alleged lunatic to be brought before him. 1880, 250, § 1.

SECT. 16. After hearing such other evidence as he may deem proper, the judge may issue a warrant for the apprehension and bringing before him of the alleged lunatic, if in his judgment the condition or conduct of such person renders it necessary or proper to do so. Such warrant may be directed to and be served by a private person named in said warrant, as well as by a qualified officer; and pending examination and hearing, such order may be made concerning the care, custody, or confinement of such alleged lunatic as the judge shall see fit.

Jury may be summoned. 1862, 223, § 6. 11 Gray, 107.

SECT. 17. The judge may, in his discretion, issue a warrant to the sheriff, or his deputy, directing him to summon a jury of six lawful men, to hear and determine whether the alleged lunatic is insane.

How jury to be selected and impanelled. G. S. 73, § 12. 1862, 223, § 6.

SECT. 18. The jurors shall be selected in equal numbers from the place in which the trial is had, and one or two adjoining places, as the judge shall direct; and the same proceedings shall be had in selecting and impanelling the jury as are prescribed in chapter forty-nine; except, that in the counties of Suffolk and Nantucket all the jurors may be taken from the same place.

Judge to preside; verdict. G. S. 73, § 13.

SECT. 19. The judge shall preside at such trial, and administer to the jury an oath faithfully and impartially to try the issue, and the verdict of the jury shall be final on the complaint.

How deficiency in jury supplied. G. S. 73, § 14

SECT. 20. If by reason of challenges or otherwise there is not a full jury of the persons summoned, the judge shall cause the officer who served the summons, or in his absence the officer attending the jury, to return suitable persons to supply the deficiency; and shall have the same authority as the supreme judicial court to enforce the attendance of jurors and witnesses, and inflict fines for non-attendance.

Fees of officers, jurors, and witnesses. G. S. 73, § 15.

SECT. 21. The officer who summons and attends the jury shall receive therefor four cents a mile for all necessary travel, and one dollar and fifty cents for each day that he attends upon them; and the jurors and witnesses shall be entitled to such compensation as is prescribed for jurors and witnesses in the supreme judicial court.

Judge to keep docket, original application, etc. 1880, 250, § 2.

SECT. 22. Each judge shall keep a docket or record of the causes relating to lunatics coming before him, numbered or otherwise properly designated, and the disposition of them. He shall also receive and keep on file the original application, statement of

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applicant, and certificate of physicians; and the copy of the order of commitment, attested by and with the return thereon of the officer or other person serving the same.

Fees of judges, physicians, and officers. 1879, 222. 1880, 250, § 3.

SECT. 23. The fees of the judge shall be as follows: for hearing and determining the application and filing papers, in cases where the alleged lunatic is brought before him, three dollars; and and in cases where he is required to go from his office or place of business to see and examine the alleged lunatic, an additional fee of one dollar and all necessary expenses of travel. In cases where more than one day is actually and necessarily occupied in a hearing, two dollars for each additional day shall be allowed. The fee for the physician's certificate shall be two dollars for each physician, and twenty cents for each mile travelled one way. The fees for officers serving process under this chapter shall be the same as are allowed by law in like cases.

Expenses how paid. 1880, 250, § 3. 1881, 186, § 1.

SECT. 24. All necessary expenses attending the apprehension, examination, trial, or commitment of an alleged lunatic, shall, where the commitment is to a state lunatic hospital, county receptacle, or the Boston lunatic hospital, be allowed and certified by the judge, and presented as often as once a year to the county commissioners, who shall examine and audit the same; and they shall then be paid by the treasurer of the county of which the alleged lunatic is an inhabitant. When application is made for commitment to any other asylum, hospital, or receptacle, the expenses shall be paid by the applicant, or some one in his behalf.

State board to apply for commitment to hospital, when. 1864, 288, § 7.

SECT. 25. When the state board has reason to believe that any insane person, not incurable, is deprived of proper remedial treatment, and is confined in an almshouse or other place, whether such insane person is a public charge or otherwise, it shall cause application to be made to a judge for the commitment of such person to a hospital in the manner herein prescribed.

Persons violently insane may be received at hospitals without warrant of commitment, when. 1881, 272, § 1.

SECT. 26. The superintendent or keeper of any lunatic hospital, including the McLean Asylum at Somerville, may receive into his custody and detain in such hospital or asylum, for a period not exceeding five days, without an order of a judge, as provided in section eleven, any person as insane whose case is duly certified to be one of violent and dangerous insanity and emergency by two physicians qualified as provided in section thirteen, which certificates shall be separately made and signed, and shall conform in all other respects to the provisions of section thirteen. In addition to such certificates, an application, signed by one of the selectmen of the town, or by the mayor or one of the aldermen of the city in which such insane person resides or is found, shall be left with the superintendent of the hospital or asylum in which the

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insane person is received, and such application shall contain the statement in respect to such insane person which is required by section fifteen, and a further statement that the case is one of violent and dangerous insanity.

Bond in such cases. 1881, 272, § 2.

SECT. 27. When an insane person is committed to a lunatic hospital or asylum in accordance with the provisions of the preceding section, the party committing such person shall give a bond in the sum of one hundred dollars to the treasurer of such hospital or asylum, with condition that he will within five days procure an order for the commitment of said patient, as provided in section eleven, or, failing thereof, will remove him.

Persons making voluntary application may be received. 1881, 272, § 3.

SECT. 28. The superintendent or keeper of any hospital, as aforesaid, may receive and detain therein, as a boarder and patient, any person who is desirous of submitting himself to treatment, and makes written application therefor, but whose mental condition is not such as to render it legal to grant a certificate of insanity in his case. No such boarder shall be detained for more than three days after having given notice in writing of his intention or desire to leave such hospital.

Notice to be given to board of health, lunacy, and charity. 1881, 272, § 4.

SECT. 29. When a patient is received into any such hospital upon his own application, or under the provisions of section twenty-six, the superintendent thereof shall give immediate notice of such reception to the state board of health, lunacy, and charity, stating all the particulars of the case, including the legal settlement of the person so received if known; and said board shall immediately cause such cases to be investigated, and a record to be made of all the facts pertaining thereto.

Penalty upon physician for conspiring to commit sane person. 1881, 272, § 5.

SECT. 30. Any physician who wilfully conspires with any person unlawfully or improperly to commit to any lunatic hospital or asylum in this state any person who is not insane, shall be punished by fine or imprisonment at the discretion of the court.

EXPENSES.

Price of board for lunatic paupers in state hospitals. 1880, 149.

SECT. 31. The price for the support, in state lunatic hospitals, of state, city, and town paupers shall be three dollars and twenty-five cents a week for each person.

Charges for state paupers to be paid quarterly, and may afterwards be recovered by the state. 1862, 223, § 11. 1870, 105, § 1. 1879, 88. 116 Mass. 570.

SECT. 32. The charges for the support of lunatics not having known settlements in this state shall be paid quarterly by the commonwealth; and the same may afterwards be recovered, by the treasurer of the commonwealth, of the lunatics themselves, if of sufficient ability to pay the same, or of any person or kindred bound by law to maintain them, or of the place of their settlement, if any such is ascertained. And the district-attorneys or other prosecuting officers shall bring actions therefor when requested.

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SECT. 33. The charges for the support of lunatics having known settlements in this state shall be paid quarterly, either by the persons bound to pay, or by the place in which such lunatics had their residence at the time of their commitment, unless other sufficient security is taken to the satisfaction of the trustees, for such support. If any place or person refuses to pay such charges, or such sum as may be charged and due according to the by-laws of the hospital for the removal of a patient whom the trustees are authorized by law to remove, for thirty days after the same has been demanded in writing by the treasurer of the mayor and aldermen of the city, or of the selectmen of the town, or of the person liable therefor, the same, with interest from the time of such demand, may be recovered for the use of the hospital, in an action to be instituted by the district-attorneys, or other prosecuting officers, in the name of the treasurer, against such delinquent city, town, or person.

For town and city paupers to be paid quarterly; if not, may be recovered, etc. 1862, 223, § 10. 12 Allen, 510.

SECT. 34. Every city or town paying expenses for the support or removal of a lunatic committed to either hospital shall have like rights and remedies to recover the full amount thereof, with interest and costs, of the place of his settlement, as if such expenses had been incurred in the ordinary support of the lunatic; and the lunatic, if of sufficient ability to pay the same, and any kindred bound by law to maintain him, shall be liable for all such expenses paid by a city or town in either case.

Remedy of towns paying for support, etc. G. S. 73, § 25. 18 Pick. 379. 9 Cush. 585. 5 Gray, 390. 11 Gray 107. 6 Allen, 586. 119 Mass. 479.

CERTAIN PRIVILEGES OF PATIENTS IN HOSPITALS.

SECT. 35. An attorney at law, regularly retained by or on behalf of any person committed to a lunatic hospital, asylum, or receptacle for the insane, shall be admitted to visit such client at all reasonable times, if in the opinion of the superintending officer of such hospital, asylum, or receptacle, such visit would not be injurious to such person; or if a judge of the supreme judicial court, superior court, or probate court, in any county first orders in writing that such visits be allowed.

Attorney may visit patients, when. 1879, 195, § 4.

SECT. 36. All patients in any lunatic hospital, asylum, or receptacle for the insane shall be allowed to write monthly to the superintendent and to the state board; and they shall be furnished by the superintendent with all materials necessary for such correspondence. A locked box shall be placed in each ward, in which each writer may deposit his letters, and the boxes shall be opened and the letters distributed monthly by the state board.

Patients shall be allowed to write letters to certain persons; shall be furnished with materials for correspondence; boxes for letters, etc. 1874, 363, §§ 1, 2.

ASYLUM FOR CHRONIC INSANE.

SECT. 37. The trustees of the Worcester Lunatic Hospital shall have the same authority relative to the management and

Asylum for chronic insane at Worcester.

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1863, 240, § 4. 1877, 227. 1879, 291, § 3.

government of the temporary asylum at Worcester, the care of the inmates, and the collection and disbursement of moneys for and on account of it, and to the same extent, as if said asylum was a part of said hospital; except that the inmates thereof shall be only such as may be transferred thereto by the state board, according to law.

TRANSFER AND DISCHARGE OF LUNATICS.

Governor may transfer inmates from one state hospital to another. G. S. 73, § 26. See ch. 79, § 9.

SECT. 38. The governor may at any time cause to be removed from any one of said hospitals to either of the others, such of the inmates thereof as circumstances or the necessities of the case may in his judgment require.

Trustees may remove inmates when hospitals are too crowded. 1862, 223, 13.

SECT. 39. If at any time all the state lunatic hospitals are so full that all the inmates cannot be suitably accommodated therein, and in the opinion of the trustees of either hospital it is proper that some should be removed, the trustees may remove to their respective homes, or to the places of their legal settlement, or of their residence, so many as may be necessary to afford suitable accommodation for the remainder; but only such patients shall be selected for removal as, in the opinion of the trustees and superintendent, are not susceptible of improvement and can be suitably managed at their homes or in the places to which they may be sent.

Inmates may be discharged by trustees or court. 1871, 321, § 1.

SECT. 40. Any two of the trustees of a state lunatic hospital, on an application in writing or of their own motion, or any judge of the supreme judicial court at any time and in any county, or the judge of the probate court for the county in which the hospital is situated, or in which the patient had his residence at the time of his commitment or admission, on such application, and after such notice as the said trustees or judge may deem reasonable and proper, may discharge any person confined therein, if it appears that such person is not insane, or, if insane, will be sufficiently provided for by himself, his guardian, relatives, or friends, or by the city or town liable for his support, or that his confinement therein is not longer necessary for the safety of the public or his own welfare.

may be removed to place of residence, etc., when. 1871, 321, § 2.

SECT. 41. Any two of the trustees may also remove any person confined therein to the city or town in which the judge committing him certified that he resided at the time of the order for commitment, or to the place of his settlement, when in their opinion he ceases to be dangerous and is not susceptible of mental improvement at the hospital, if such city or town does not remove him after reasonable notice in writing.

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Application for discharge may be made to court, when. 1871, 321, § 3.

SECT. 42. Any person may make written application to a judge of the supreme judicial court at any time and in any county, setting forth that he believes or has reason to believe that a person therein named is confined as an insane person in a lunatic hospital or other place, whether public or private, and ought not longer to be so confined, and stating the names of all persons supposed to be interested in keeping him in confinement, and requesting his discharge.

Notice to be given to superintendent, etc. Further proceedings. 1871, 321, § 4.

SECT. 43. The judge, upon reasonable cause being shown for a hearing, shall order notice of the time and place of hearing on said application to be given to the superintendent in charge of the hospital or place of confinement, and to such other persons as he deems proper, and such hearing when ordered shall be had as speedily as conveniently may be before any judge of the supreme judicial court in any county. The alleged insane person may be brought before the judge at the hearing upon a writ of habeas corpus, if any party so requests and the judge deems it proper, and an issue or issues may be framed and submitted to a jury by direction of the judge or on the request of any person who appears in the case. The jurors may be those in attendance on said court, if in session at the time of the hearing, or may be summoned for the special purpose on venires issued by the clerk of said court upon the order of the judge substantially in accordance with the provisions of chapter one hundred and seventy.

If not insane or dangerous, to be discharged. 1871, 321, § 5. 1879, 132.

SECT. 44. If it appears upon the verdict of the jury, or in the opinion of the judge, if not submitted to a jury, that the person so confined is not insane, or that he is not dangerous to himself or others, and ought not longer to be so confined, he shall be discharged from such confinement.

Trustees to furnish suitable clothing, etc., on discharge, and shall be reimbursed therefor, how. G. S. 73, § 32. 1862, 223, § 16.

SECT. 45. No pauper shall be discharged from a state hospital without suitable clothing; and the trustees may furnish the same at their discretion, together with such sum of money, not exceeding twenty dollars, as they may deem necessary. Such money and the cost of such clothing, the expense of pursuing such pauper lunatics as escape therefrom, and of burial of such as die in the hospitals, shall be reimbursed to the trustees by the places of legal settlement of city and town paupers, and by the commonwealth in the case of state paupers.

COUNTY RECEPTACLES.

County receptacles, etc., for insane persons to be provided G. S. 74, § 1.

SECT. 46. There shall be in each county within the precincts of the house of correction, or if in the judgment of the county commissioners it cannot be conveniently provided within the same,

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then in some other building or buildings to be deemed a part of the house of correction, a convenient apartment or receptacle for the confinement of insane persons not furiously mad.

Special provision for the county of Essex. G. S. 74, § 2. 5 Met. 54.

SECT. 47. The county commissioners of the county of Essex shall appoint a superintendent and matron for the receptacle in that county, and all persons confined therein shall be under the care and custody of said superintendent; who shall keep a record of all commitments and discharges, and receive a reasonable compensation for his services. Said county shall have the same remedies for the expenses of the care and support of such persons, as are provided for keepers and masters of houses of correction in relation to the maintenance of prisoners committed to houses of correction.

Who may commit insane persons not furiously mad. G. S. 74, § 4.

SECT. 48. Any judge authorized under this chapter to commit lunatics may in his discretion commit any insane person not furiously mad, and having a settlement in this state, to the county receptacle aforesaid.

Support of persons confined. G. S. 74, § 6. 5 Met. 54.

SECT. 49. Provision shall be made for the comfortable support of all persons confined in said receptacles, and they shall be governed or employed in such manner as the county commissioners may in the exercise of their discretion deem best. Such sum a week shall be allowed and paid for the support of persons so confined as the commissioners shall direct, and the same may be recovered of such person, or of any parent, kindred, master, guardian, city, or town, bound by law to maintain him.

Insane persons confined in jails, etc., may be removed by order of governor. G. S. 74, § 7. 1880, 250, § 6.

SECT. 50. Any insane person confined by legal authority in a jail, house of correction, or such county receptacle, may be removed therefrom to either of the state lunatic hospitals, or to any other jail, house of correction, or other suitable place, by order of the governor, when it appears to him that such removal would be expedient and just; and the sheriff of the county in which such person is confined shall execute such order and convey the insane person to the place therein designated.

How insane persons not furiously mad may be discharged. G. S. 74, § 8. 1880, 132, § 1.

SECT. 51. Any person confined by virtue of section forty-eight may be discharged, when in the opinion of a judge authorized to commit insane persons such discharge would be for the benefit of such person, or when in his opinion such person would be comfortably supported by any parent, kindred, friend, master, or guardian, or by any place in which he has a legal settlement.

Jailers, etc., not to contract for support of insane paupers, etc. G. S. 74, § 10.

SECT. 52. The keeper of a jail, house of correction, or county receptacle shall not contract for supporting within the county buildings any lunatic who is a town pauper, without first obtaining the approbation in writing of the county commissioners; and for every offence against this provision such keeper shall forfeit a sum not less than one hundred dollars.

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PRIVATE INSANE ASYLUMS.

Private asylums to be licensed. 1864, 288, § 8.

SECT. 53. The governor and council may license any suitable person to establish and keep an asylum or private house for the reception and treatment of insane persons, and may at any time revoke such license. And such asylum or private house shall be subject to visitation by the governor and council, or any committee thereof, and by the judge of the probate court of the county wherein the same is situated. [See also chap. 79, sect. 5.]

Penalty for keeping without license. 1864, 288, § 9.

SECT. 54. Whoever establishes or keeps such an asylum or private house without a license, unless otherwise authorized by law, shall forfeit a sum not exceeding five hundred dollars.

MASSACHUSETTS SCHOOL FOR IDIOTIC AND FEEBLE-MINDED YOUTH.

Trustees of Massachusetts school for idiotic, etc., youth to be appointed. 1878, 126, § 2.

SECT. 55. There shall be six trustees, on the part of the state, of the Massachusetts School for Idiotic and Feeble-Minded Youth, who shall be appointed for the term of three years. The present trustees shall continue to hold their offices during the terms for which they were appointed. Two members shall retire each year; and the vacancies so arising, as well as those occurring otherwise, shall be filled by the governor, with the advice and consent of the council.

Five thousand dollars a year to be paid to school by the state, on certain conditions. Res. 1851, 44. 1878, 126, § 2.

SECT. 56. There shall be paid annually out of the treasury of the commonwealth to the treasurer of said school five thousand dollars, to be devoted to teaching and training indigent idiotic children belonging to this commonwealth, upon the following conditions, namely: that the board of trustees having the direction of the institution shall be composed of twelve persons, six of whom shall be appointed by the governor and council; that the governor, lieutenant-governor, secretary of the commonwealth, president of the senate, speaker of the house, and the two chaplains of the general court shall constitute a board of visitors, to visit and inspect the institution as often as they see fit, to examine the by-laws and regulations enacted by the corporation, and, generally, to see that the object of the institution is carried into effect; that the institution shall gratuitously receive and educate thirty idiotic persons, to be designated by the governor; that other applicants of proper age and condition, children of inhabitants of this commonwealth who are not wealthy, shall be received at a charge not exceeding the actual average cost of the inmates; and that the members of the legislature for the time being shall be ex officio visitors of the institution, and have the privilege, during the sessions, of inspecting it. And the governor is authorized

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annually to draw his warrant for five thousand dollars, in four equal quarterly payments, in favor of the treasurer of the school, when he has satisfactory evidence that the foregoing conditions have been fulfilled.

COMMITMENT AND DISCHARGE OF INSANE CRIMINALS.

[Upon a clause of chap. 87 some remarks may be made. Sect. 38 has quite fallen into disuse for nearly twenty years, or since the Board of State Charities was organized in 1863; the central Board having since performed the duty earlier imposed upon the Governor.

In a particular class of patients at the hospitals, the Governor must still exercise a power of discharge, if they are to be discharged at all; namely, the persons guilty of murder or manslaughter who are found to be insane, under sect. 20 of chap. 214 of the Public Statutes. For convenience, the sections of this chapter relating both to commitment and discharge will here be cited together.]

COMMITMENT AND DISCHARGE OF PRISONERS. (Chap. 214, Public Statutes.)

SECT. 16. When a person indicted is at the time appointed for the trial found to the satisfaction of the court to be insane, the court may cause him to be removed to one of the state lunatic hospitals for such a term and under such limitations as it may direct.

. . . . . .

SECT. 19. When a person is acquitted by the jury by reason of insanity, the jury shall state that fact to the court, and thereupon the court, if satisfied that he is insane, may order him to be committed to a state lunatic hospital, under such limitations as may seem proper.

SECT. 20. When a person indicted for murder or manslaughter is acquitted by the jury by reason of insanity, the court shall order such person to be committed to one of the state lunatic hospitals during his natural life.

SECT. 21. Any person committed to a state lunatic hospital under the preceding section may be discharged therefrom by the governor, by and with the advice and consent of the council, when he is satisfied, after a hearing of the matter, that such person may be discharged without danger to others.

[Although the cases arising under these sections are comparatively few, they are among the most perplexing of all with which our lunacy laws deal.

The Governor holds a power of commitment to the lunatic hospitals in the case of convicts becoming insane in the prisons, particularly in the State Prison; but this power, under chap. 250 of the Acts of 1880, is exercised, after this Board, through its stand-

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ing committee of experts, has passed upon the insanity of such prisoners at Concord or at Sherborn. The law on this subject, as it stands in the Public Statutes, chap. 222, sects. 10 to 14 (the last-named section being a transcript of chap. 165, sects. 1 and 3 of the Acts of 1881), is as follows: —]

REMOVAL OF INSANE PRISONERS. (Chap. 222, Public Statutes.)

SECT. 10. The state board of health, lunacy, and charity shall designate two persons, expert in cases of insanity, to examine convicts in the state prison or reformatory prison, alleged to be insane. When any such convict appears to be insane, the warden or superintendent shall notify one of the persons so designated, who shall, with the physician of the prison, examine the convict and report to the governor the result of their investigation. If upon such report the governor deems the convict insane and his removal expedient, he shall issue his warrant directed to the warden or superintendent authorizing him to cause the convict to be removed to one of the state lunatic hospitals, there to be kept until, in the judgment of the superintendent and trustees of the hospital to which he may be committed, he should be returned to prison. When the superintendent and trustees of the hospital have come to such judgment, the fact shall be certified upon the warrant of the governor, and notice shall be given to the warden or superintendent of the prison, who shall thereupon cause the convict to be reconveyed to the prison, there to remain pursuant to the original sentence, computing the time of his detention or confinement in the hospital as part of the term of his imprisonment.

SECT. 11. Any officer authorized to serve criminal process may execute an order for the removal of a convict to or from any prison under the provisions of the preceding section. The person making such examination of a convict under the preceding section shall, if he is not a salaried officer of the state board of health, lunacy, and charity, receive for his services his actual travelling expenses and three dollars a day for each day so employed, which shall be paid from the annual appropriation of the prison in which the convict is examined.

SECT. 12. When a convict in a house of correction or prison other than the state prison or reformatory prison appears to be insane, the physician in attendance shall make a report therof to the jailer or master, who shall transmit the same to one of the judges mentioned in section eleven of chapter eighty-seven. The judge shall make inquiry into the facts, and, if satisfied that the convict is insane, shall order his removal to one of the state lunatic hospitals pursuant to the provisions of sections twelve and thirteen of said chapter.

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SECT. 13. If a person so removed becomes sane before the expiration of his sentence, he shall be forthwith returned to the prison or house of correction from which he was removed, there to remain pursuant to his original sentence, computing the time of his confinement in the hospital as part of the term of his imprisonment.

SECT. 14. When a person held in any jail for trial or for sentence, except for a capital crime, appears to be insane, he may be removed to one of the state lunatic hospitals, as a convict may be removed from a house of correction under section twelve. When a person so removed is, in the opinion of the trustees and superintendent of the hospital, restored to sanity, he shall forthwith be returned to the jail from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed thereto.

[The necessity for an asylum for the criminal insane was considered by the Legislature of 1881 on the recommendation of his Excellency the Governor; and the following resolve was passed: —]

[Chap. 33, Resolves of 1881.]

Resolved, That so much of the Governor's message as recommends that separate provision be made for the criminal insane be referred to the State Board of Health, Lunacy, and Charity, with instructions to consider the same, and report a plan by which it may be carried into effect to the next Legislature.

[Such a plan was accordingly reported by this Board to the Legislature of 1882; but, failing to be considered by that body, it will be brought in some form before the Legislature of 1883.]

[NOTE. — For the laws relating to transfers by the Board of Health, Lunacy, and Charity, from and to hospitals, asylums, etc., see Public Statutes, chap. 79, sects. 9 and 13 (pages 70 and 71 of this manual); for general powers of the Board in regard to theinsane poor and lunatic hospitals, see sects. 2, 5, 7, 8, 14, 15 of the same chapter. Visitation of private asylums by the State Board is provided for in sect. 5.]

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PART THIRD.

LAWS OF PUBLIC CHARITY.

NOTE. — The Health Laws in their administration, so far as the Board of Health, Lunacy, and Charity is concerned, are considered first by the Health Officer mainly; and the Lunacy Laws are considered in their administration first by the Inspector of Charities mainly, although the Superintendent of In-door and of Out-door Poor may also take cognizance of some cases under the Health and Lunacy Laws. Under the Laws relating to Public Charity, which are numerous and of wide application, not only to the In-door and the Out-door Poor, but to the general system of public charities in Massachusetts, all the officers of the Board take part in the administration, each in his own department; but the work chiefly falls, in its practical details, upon the Superintendent of Out-door Poor (who has the largest class of public dependants to deal with) and the Superintendent of In-door Poor (who has the interchange, transfer, and discharge of the In-door Poor). The latter also supervises immigration, and has the visitation of children, except those under three years. In the supervision and visitation of State and municipal almshouses, hospitals, reformatories, etc., the Inspector of Charities performs the duties; all these officers being under the direction of the State Board and its Committees.

[Public Statutes, Chap. 79.]

OF THE STATE BOARD OF HEALTH, LUNACY AND CHARITY.

SECTION

1. State board of health, lunacy and charity, how organized, etc.
*2. to have supervision over certain state institutions, etc. May assign its powers and duties to agents.
3. to appoint its officers, fix compensation, hold monthly meetings, make by-laws, make annual report, serve without compensation.
4. to prepare tables of paupers supported by towns, etc.
*5. to visit certain institutions, etc.
6. to prescribe form of certificates to be used in sending paupers to state almshouse, etc.
*7. to have annual inventory of certain institutions.
*8. powers of in relation to paupers at hospitals.

SECTION

*9. State board may transfer pauper inmates from one institution to another, etc.
10. may transfer inmates of reform or industrial school to workhouse.
11. may transfer children from almshouse to primary school.
12. may select paupers for support at state workhouse or primary school, etc.
*13. may transfer inmates of almshouse or workhouse to state lunatic hospitals.
*14. may remove certain state paupers to places of settlement.
*15. Proceedings upon such removal.
16. Private societies, etc., to make report to state board.
17. When such reports are to be made.

* See Note, p. 66.

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State board of health, lunacy and charity, how organized, etc. 1879, 291, § 2.

SECTION 1. The state board of health, lunacy and charity shall consist of nine persons. The present members thereof shall continue to hold their offices during the terms for which they were appointed. Two members of the board shall retire each year, in the order of their appointment, except every fifth year, when one shall retire. The appointments or reappointments to fill vacancies occurring from expiration of terms of office shall be for five years; and all vacancies which may occur from that cause or otherwise shall be filled by the governor, with the advice and consent of the council.

to have supervision over certain state institutions, etc. 1879, 291, §§ 3, 4.

* SECT. 2. The board shall have general supervision over the state lunatic hospitals, the state almshouse, the state workhouse, the state primary school, the state reform school, and the state industrial school for girls; it may, when directed by the governor, assume and exercise the powers of the boards of trustees of said institutions, in any matter relating to the management thereof, excepting the trusts which are vested in the trustees of the state primary and reform schools; and may assign any of its powers and duties to agents appointed for the purpose, and may execute any of its functions by such agents, or by committees appointed from and by said board.

May assign its powers and duties to agents.

to appoint its officers, fix compensation, hold monthly meetings, make by-laws, make annual report, serve without compensation. 1879, 291, § 7.

SECT. 3. The board, with the consent of the governor, shall appoint such officers as may be necessary, and fix their compensation, within the limits of the annual appropriation. It shall be provided with rooms at the state-house, and shall hold meetings each month on a day fixed by itself, and at such other times as may be needful. It shall make its own by-laws, and shall make a report of its doings to the governor and council, on or before the thirty-first day of December in each year, such report being made up to the thirtieth day of September inclusive. It shall embody in its report a properly classified and tabulated statement of the receipts and expenses of the board and of each of the several institutions named above for the said year, and a corresponding classified and tabulated statement of their estimates for the year ensuing, with its opinion as to the necessity or expediency of appropriations in accordance with said estimates; but this provision shall not apply to estimates for the ordinary expenses of lunatic hospitals. The report shall also present a concise review of the work of the several institutions for the year preceding, with such suggestions and recommendations as to them, and the charitable, reformatory, and sanitary interests of the state, as may be deemed expedient. The members of the board, and of the boards of trustees of the state institutions above named, shall receive no

* See Note, p. 66.

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compensation for their services; but their travelling and other necessary expenses shall be allowed and paid; and no person employed by the board shall be a member thereof.

State board of health, lunacy, and charity to prepare tables of paupers supported by towns, etc.

SECT. 4. The board shall also prepare, from the returns made by overseers of the poor, tables of paupers supported by towns, under section thirty-five of chapter eighty-four, and print in its annual report the most important information thus obtained.

1867, 209, § 4.

to visit certain institutions, etc. G. S. 71, § 3. 1877, 195, § 2. 1879, 291, §§ 1, 3, 5.

* SECT. 5. The board shall at least once in every year visit all places where state paupers are supported, and ascertain from actual examination and inquiry whether the laws in respect to such paupers are properly observed, particularly in relation to such as are able to labor; and shall give such directions as will insure correctness in the returns required in relation to paupers; and may use such means as may be necessary to collect all desired information in relation to their support. It shall visit the state almshouse, the state primary school, and the state reform school, as often as once in each month, for the purpose of inspecting said institutions, and for this purpose it shall, by some woman or women deputed by it, have access at all hours of the day or night to the portions of said institutions occupied by the women or children there maintained at the public expense; and the officers of said institutions shall furnish all information concerning the condition and treatment of their inmates which the board shall require. It shall also visit and inspect every private asylum or receptacle for the insane at least once in every six months.

to prescribe form of certificates to be used in sending paupers to state almshouse, etc. G. S. 71, § 5. 1869, Res. 39.

SECT. 6. It shall prescribe to the superintendent of the state almshouse the forms for statistical returns to be made by him in his annual report in relation to the sex, age, and nativities of the inmates, and the places from which they were sent. It shall also prescribe the form of certificates required of mayors of cities, or overseers of the poor of towns, when a pauper is sent therefrom to the state almshouse; which certificate shall contain such inquiries in relation to the age, parentage, birthplace, and former residence of, and other facts relating to, the pauper, as the board may deem necessary, to which mayors and overseers of the poor shall render true answers as far as they are able, before the pauper is received into the almshouse. The several cities and towns shall be furnished by the board with blank forms for said certificate.

to have annual inventory of certain institutions.

* SECT. 7. The trustees of the several institutions named in section two shall annually on the thirtieth day of September cause to be made and sent to the board an accurate inventory of the

* See Note, p. 66.

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G. S. 5, § 11. 1879, 291, §§ 4, 7.

stock and supplies on hand, and the value and amount thereof, at each institution, under the following heads:

Live stock on the farm; produce of the farm on hand; carriages and agricultural implements; machinery and mechanical fixtures; beds and bedding in the inmates' department; other furniture in the inmates' department; personal property of the state in the superintendent's department; ready-made clothing; dry goods; provisions and groceries; drugs and medicines; fuel; library.

State board of health, lunacy, and charity, their powers in relation to paupers at hospitals. G. S. 71, § 6. 1869, Res. 39.

* SECT. 8. The board shall have the same powers in relation to state paupers who are inmates of either of the lunatic hospitals in this state, and their property, as are by law vested in towns and overseers of the poor in reference to paupers supported or relieved by towns.

may transfer pauper inmates from one institution to another, etc. G. S. 71, § 7. 1863, 240, § 4. 1879, 291, § 3.

* SECT. 9. It may transfer pauper inmates from one state charitable institution or lunatic hospital to another; or may send them to any state or place where they belong, when the public interest or the necessities of the inmates require such transfer.

102 Mass. 215. 116 Mass. 570.

may transfer inmates of reform or industrial school to workhouse. 1866, 198, § 6. 1876, 14.

SECT. 10. On application of the trustees of the state primary and reform schools, the board may transfer any inmate of the state reform school or of the state industrial school, whom said trustees deem incorrigible or an unfit subject for said institutions, with the mittimus, to the state workhouse, there to be held on such mittimus till the term of sentence expires; but the board may return such person, with the mittimus, to the school from which such transfer was made, whenever in its judgment the object of such transfer has been accomplished.

may transfer children from almshouse to primary school. 1866, 209, §§ 4, 5.

SECT. 11. The board may from time to time transfer from the state almshouse to the state primary school all children likely to continue for a period of six months under the care of the state, and in suitable condition of body and mind to receive instruction; and especially orphans, or children who have been abandoned by their parents, or whose parents have been convicted of crime, or come within any of the descriptions of persons contained in section twenty-nine of chapter two hundred and seven. It may also make such other transfers of children as it may deem necessary from the state almshouse, and shall have the power of admission and discharge at the state primary school, together with the other powers vested in the board in relation to state paupers in almshouses and hospitals.

State board may select paupers for support at state workhouse or primary

SECT. 12. The board may from time to time select for support at the state workhouse or state primary school any state paupers whose labor, in domestic or other service at those institutions,

* See Note, p. 66.

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may contribute towards the cost of their support, or whose maintenance at the same may for special reasons be deemed expedient; and in case of an emergency may transfer any inmates of the state almshouse to either of said institutions, there to be supported while the emergency continues; but the board shall not so transfer an inmate of the state almshouse to the state workhouse as a punishment for crime.

school, etc. 1872, 45, § 3.

* SECT. 13. The board may transfer and commit to either of the state lunatic hospitals, or to the asylum for the chronic insane at Worcester, any inmate of the state almshouse or state workhouse, whose condition requires such transfer; but no such transfer shall be made without the certificate of two physicians, one of whom has no connection with any hospital or asylum for the insane, to the insanity of such inmate. Upon application of the director, manager or trustees of a private asylum for the insane, the board shall have the power to transfer any inmates of such asylum to another private asylum, or to a state lunatic hospital; but no such transfer shall be made without the consent of the legal or natural guardian of such inmate.

State board of health, lunacy and charity may transfer inmates of almshouse or workhouse to state lunatic hospitals. 1880, 250, § 4.

SECT. 14. If a state pauper who has received a permit from the overseers of the poor of a city or town to become an inmate of the state almshouse expresses a preference to be sent to any state or place where he has a legal settlement, or friends willing to support him, the board may remove said pauper, instead of committing him, if in its judgment the interest of the commonwealth and of the pauper will be promoted thereby; but no person shall be so removed, unless, in the judgment of said overseer and of the board, he will become a charge to the state for at least one year; and the board shall return, in its annual report, the names of all persons so removed, the places whence removed, and the cost of each removal.

may remove certain state paupers to places of settlement. 1860, 83, § 1. 1879, 195, § 2.

SECT. 15. The names of persons so removed shall be entered upon the register of the almshouse or hospital, together with the usual details of their history, and shall be recorded by the several superintendents, as discharged to the board, for the purpose of removal from the state.

Proceedings upon such removal. 1860, 83, § 2.

SECT. 16. Every private society or institution for charitable purposes, except institutions for the instruction of the deaf, dumb and blind, when aided by a grant of money from the state treasury, shall annually prepare and send to the board a written or printed report of all its proceedings, income and expenditures, properly classified, for the year ending on the thirtieth day of September, stating the sum appropriated by the commonwealth, the sum ex-

Private societies, etc., to make report to state board. 1867, 243, §§ 1, 2. 1875, 118.

* See Note, p. 66.

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pended under said appropriation, the whole number and the average number of beneficiaries, the number and salaries of officers and person employed, and such other information as the board may require.

When such reports are to be made. 1867, 243, § 2.

SECT. 17. Said report, if in writing, shall be sent in by the fifteenth day of October, and if in print, by the first day of November in each year. [See also Acts of 1882, chap. 217.]

[Public Statutes, Chap. 83.]

OF THE SETTLEMENT OF PAUPERS.

SECTION
1. Legal settlements, how acquired. *First*, By married women. *Second*, By legitimate children. *Third*, By illegitimate children. *Fourth*, By living on freehold estate, etc. *Fifth*, By residence and paying taxes. *Sixth*, By women, residence. *Seventh*, Preceding clause applicable to certain married women, and to widows. *Eighth*, By serving one year in certain town offices. *Ninth*, By settled and ordained ministers. *Tenth*, By serving apprenticeship, etc. *Eleventh*, By soldiers and sailors. *Twelfth*, Where to be, on division or incorporation of towns.
2. Settlement not acquired while receiving relief as a pauper.
3. Inability to maintain wife, etc., in lunatic hospital, etc., not to make one a pauper.
4. Provision for persons who have begun to acquire settlements.
5. Settlements to continue, etc.
6. Settlements acquired under laws in force prior to Feb. 11, 1794.

Legal settlements, how acquired. 1878, 190, § 1.

SECTION 1. Legal settlements may be acquired in any city or town, so as to oblige such place to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, in the manner following, and not otherwise: namely, —

by married women. 9 Mass. 201. 12 Mass. 363. 1 Pick. 506. 13 Allen, 88. 97 Mass.

First. A married woman shall follow and have the settlement of her husband, if he has any within the state; otherwise her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage.

by legitimate children. 18 Pick. 264. 8 Cush. 528. 8 Allen, 551.

Second. Legitimate children shall follow and have the settlement of their father, if he has any within the state, until they gain a settlement of their own; but if he has none, they shall in like manner follow and have the settlement of their mother, if she has any.

by illegitimate children. 13 Mass. 381. 8 Cush. 75. 8 Allen, 551.

Third. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they are born, if neither of their parents then has a settlement therein.

by living on freehold estate, etc.

Fourth. Any person of the age of twenty-one years, having an estate of inheritance or freehold in any place within the state, and

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living on the same three years successively, shall thereby gain a settlement in such place. 4 Cush. 172. 8 Cush. 525. 1 Gray, 619. 13 Gray, 93. 16 Gray, 395. 6 Allen, 431, 477. 9 Allen, 137. 110 Mass. 113. 127 Mass. 540.

3 Met. 165.
5 Met. 350.
13 Met. 192.

Fifth. Any person of the age of twenty-one years, who resides in any place within this state for five years together, and pays all state, county, city, or town taxes, duly assessed on his poll or estate, for any three years within that time, shall thereby gain a settlement in such place. 8 Allen, 551. 99 Mass. 587. 105 Mass. 293. 107 Mass. 598. 126 Mass. 477.

by residence and paying taxes.
19 Pick. 389, 480.
12 Met. 35.
15 Gray, 15, 19.
4 Allen, 574.
6 Allen, 508.

Sixth. Any woman of the age of twenty-one years, who resides in any place within this state for five years together, shall thereby gain a settlement in such place.

by women, residence.
1879, 242, § 1.
120 Mass. 574.

Seventh. The provisions of the preceding clause shall apply to married women who have not a settlement derived by marriage under the provisions of the first clause, and to widows; and a settlement thereunder shall be deemed to have been gained by an unsettled woman upon the completion of the term of residence therein mentioned, although the whole or a part of such term has already elapsed.

Preceding clause applicable to certain married women, and to widows.
1879, 242, § 2.

Eighth. Any person being chosen, and actually serving one whole year in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable, or collector of taxes, in any place, shall thereby gain a settlement therein. For this purpose, a year shall be considered as including the time between the choice of such officers at one annual meeting and the choice at the next annual meeting, whether more or less than a calendar year.

by serving one year in certain town offices.
12 Mass. 262.
1 Pick. 129.

Ninth. Every settled ordained minister of the gospel shall be deemed to have acquired a legal settlement in the place wherein he is or may be settled as a minister.

by settled and ordained ministers.
4 Cush. 553.
7 Allen, 90.

Tenth. A minor who serves an apprenticeship to a lawful trade for the space of four years in any place, and actually sets up such trade therein within one year after the expiration of said term, being then twenty-one years old, and continues there to carry on the same for five years, shall thereby gain a settlement in such place; but being hired as a journeyman shall not be considered as setting up a trade.

by serving apprenticeship, etc.

Eleventh. Any person who was duly enlisted and mustered into the military or naval service of the United States, as a part of the quota of any city or town in this commonwealth, under any call of the President of the United States during the late civil war, or duly assigned as a part of the quota thereof after having been enlisted and mustered into said service, and who duly served for not less than one year, or died or became disabled from wounds or disease received or contracted while engaged in such service, or

by soldiers and sailors.
97 Mass. 382.
102 Mass. 358.
104 Mass. 46.
115 Mass. 342.

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while a prisoner in the hands of the enemy, and his wife or widow and minor children shall be deemed thereby to have acquired a settlement in such place; and any person who would otherwise be entitled to a settlement under this clause, but who was not a part of the quota of any city or town, shall, if he served as a part of the quota of the commonwealth, be deemed to have acquired a settlement in the place where he actually resided at the time of his enlistment. But these provisions shall not apply to any person who was enlisted and received a bounty for such enlistment in more than one place, unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who has been proved guilty of wilful desertion, or who left the service otherwise than by reason of disability or an honorable discharge.

Legal settlements, where to be, on division or incorporation of towns. 6 Met. 484. 4 Cush. 185. 1 Allen, 75.

Twelfth. Upon the division of a city or town, every person having a legal settlement therein, but being absent at the time of such division, and not having acquired a legal settlement elsewhere, shall have his legal settlement in that place wherein his last dwelling-place or home happens to fall upon such division; and when a new city or town is incorporated, composed of a part of one or more incorporated places, every person legally settled in the places of which such new city or town is so composed, and who actually dwells and has his home within the bounds of such new city or town at the time of its incorporation, and any person duly qualified as provided in the eleventh clause of this section, who, at the time of his enlistment, dwelt and had his home within such bounds, shall thereby acquire a legal settlement in such new place; but no person residing in that part of a place which upon such division is incorporated into a new city or town, and having then no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein, within the time and by the means by which he would have gained it there if no such division had been made.

Settlement not acquired while receiving relief as a pauper. 1879, 242, § 1.

SECT. 2. Nothing in the preceding section shall be construed to give to any person the right to acquire a settlement, or to be in process of acquiring a settlement, while receiving relief as a pauper, unless within five years from the time of receiving such relief he reimburses the cost thereof to the city or town furnishing the same.

Inability to maintain wife, etc., in lunatic hospital, etc., not to make one a pauper. 1881, 188.

SECT. 3. No person who actually supports himself and his family shall be deemed to be a pauper by reason of the commitment of his wife, child, or other relative to a lunatic hospital or other institution of charity, reform, or correction by order of a

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court or magistrate, and of his inability to maintain such wife, child, or relative therein; but nothing herein contained shall be construed to release him from liability for such maintenance.

Provision for persons who have begun to acquire settlements. 1878, 190, § 2.

SECT. 4. No person who has begun to acquire a settlement by the laws in force at and before the time when this chapter takes effect, in any of the ways in which any time is prescribed for a residence, or for the continuance or succession of any other act, shall be prevented or delayed by the provisions hereof; but he shall acquire a settlement by a continuance or succession of the same residence or other act, in the same time and manner as if the former laws had continued in force.

Settlements to continue, etc. 1878, 190, § 3. 13 Met. 192. 6 Cush. 61. 13 Gray, 586.

SECT. 5. Except as hereinafter provided, every legal settlement shall continue till it is lost or defeated by acquiring a new one within this state; and upon acquiring such new settlement all former settlements shall be defeated and lost.

Settlements acquired under laws in force prior to Feb. 11, 1794. 1878, 190, § 4.

SECT. 6. All settlements acquired by virtue of any provision of law in force prior to the eleventh day of February in the year seventeen hundred and ninety-four, are hereby defeated and lost; except where the existence of such settlement prevented a subsequent acquisition of settlement in the same place under the provisions of the fourth, fifth, sixth, eighth, ninth, tenth, eleventh, and twelfth clauses of section one of this chapter, or under corresponding provisions in other statutes existing prior to the passage hereof; and *provided*, that, whenever a settlement acquired by marriage has been thus defeated, the former settlement of the wife, if not defeated by the same provision, shall be thereby revived.

[Chapter 113, Acts of 1882.]

AN ACT TO AUTHORIZE TOWNS AND CITIES TO RECOVER FOR EXPENSE INCURRED IN THE SUPPORT OR RELIEF OF PAUPERS.

Be it enacted, etc., as follows:

Any city or town which incurs expense for the support of a pauper having a settlement therein may recover the same against such person, his executors or administrators, in an action of contract for money paid, laid out, and expended for his use.

[*Approved March 27, 1882.*

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PAUPER SETTLEMENT. — A DIGEST OF DECISIONS.

If an insane pauper, having his settlement in this Commonwealth, and confined under sentence, in a house of correction, is duly committed, by order of a judge of probate, to a State lunatic hospital, the town where such pauper has his settlement is liable for the expenses of his support, even after the expiration of the time for which he was sentenced to the house of correction.

Smith *v.* Lee, 12 Allen, 510 (1866).

A married woman does not acquire a settlement in a town by her husband's living on an estate of freehold therein three years successively, if, during any portion of that time, the town where they formerly lived supported her as a pauper in a lunatic hospital out of the Commonwealth.

Oakham *v.* Warwick, 13 Allen, 88 (1866).

A general law, changing the rules of settlement, and having the effect to transfer, from one town to another, the obligation to support paupers, is not therefore unconstitutional.

Bridgewater *v.* Plymouth, 97 Mass., 382 (1867).

The term "quota of any city or town," in Statute of 1865, chap. 230, sect. 1, includes every person who, during the recent civil war, was enlisted and mustered into the military or naval service of the United States, and, after quotas of city and towns were legally recognized and assigned, was credited to the quota of such city or town under any call of the President, although his term of service ended before any such legal recognition and assignment.

Ib.

A person legally capable of choosing or changing his domicile, who is residing in a city or town in this Commonwealth, with the purpose of there remaining for an indefinite time, and without retaining and keeping up any intention to return to his former home in another city or town in this Commonwealth, has his domicile in the place of his actual residence.

Wilbraham *v.* Ludlow, 99 Mass., 587 (1868).

A person legally capable of choosing or changing his domicile, who abandons his home, and thenceforth wanders from town to town, working as a day laborer "with no purpose in view, and with no opinions, desires, or intentions in relation to residence, except to have a home wherever he works," ceases to have a continuing domicile, for the purpose of acquiring a settlement in the town where the home is which he so abandons.

Ib.

A written discharge issued to a soldier by the proper military authorities, on a surgeon's certificate of disability, is conclusive evidence, in an action between two towns concerning his settlement as a pauper, under the Statute of 1865, chap. 230, of the cause of his leaving the service; and evidence is not admissible to show that the certificate was obtained by undue influence, especially without any evidence that such influence was exercised by the soldier himself; nor is evidence that he was absent without leave, and was arrested for desertion, admissible to show that he was guilty of wilful desertion, in the absence of evidence that he was tried for desertion, and convicted thereof.

Fitchburg *v.* Lunenburg, 102 Mass., 358 (1869).

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The disability of a soldier from wounds or disease contracted while he was engaged in the military service of the United States during the civil war, intended by the Statute of 1865, chap. 230, sect. 1, to give him a settlement in the town to whose quota he belonged, is such a disability, and such only, as terminated his military service within one year from his enlistment.

Wayland *v.* Ware, 104 Mass., 46 (1870).

The Statute of 1865, chap. 230, sect. 1, gives a settlement to a soldier credited to the quota of a town, in conformity with its terms, even if he was credited in excess of the proportion due from the town at the time of such credit.

Ib.

On the trial of an issue between two towns of the settlement of an infant pauper, it is incompetent for the mother to testify that the infant, though born in wedlock, is illegitimate.

Abington *v.* Duxbury, 105 Mass., 287 (1870).

In an action by one town to recover from another the expense of supporting, as a pauper, a married woman alleged to have her settlement with the defendants, it is competent for them to prove that her husband has a settlement in the Commonwealth elsewhere than with them, derived from his mother, without first proving that he derived no settlement from his father.

Ib.

A man is not prevented from gaining a settlement, under the General Statutes, chap. 69, sect. 1, clause 12, in a town in which he has lived for ten years together under a fictitious name, and paid poll and other taxes assessed on him under that name, for five years within said time, by the fact that he has deserted his wife and children meanwhile in the town where he was formerly settled, and its officers have, in one year of the ten, given her some aid without his knowledge, or ever calling on him for payment.

Wareham *v.* Milford, 105 Mass., 293 (1870).

A soldier discharged for disability does not thereby acquire a settlement under the Statute of 1865, chap. 230, unless the disability arose from wounds or disease received or contracted in the service, and there is no presumption that it did so arise.

Ashland *v.* Marlborough, 106 Mass., 266 (1871).

In an action between two towns to recover for expenses incurred by the plaintiffs, in supporting a pauper alleged to have a settlement with the defendants, it was admitted that he had no other than a derivative settlement, and was found as a fact that he derived a settlement with the defendants from his ancestors, unless his grandfather acquired one with the plaintiffs. Held, that the burden of proving that the grandfather acquired such a settlement was on the defendants.

Dana *v.* Petersham, 107 Mass., 598 (1871).

Evidence that a man who resided in a town eighteen years, in occupation of real estate, was taxed there on his poll in five years of the eighteen, and also on real estate in four years of the five, and that in two of the five years his name was on the voting-list of the town, is not conclusive that the taxes were paid by him.

Ib.

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The provisions of the Statutes of 1865, chap. 230, and 1868, chap. 328, sect. 3, relating to the acquirement by soldiers in the civil war of settlements in cities or towns of which they were inhabitants, and as part of whose quotas they were duly enlisted and mustered, apply to drafted men as well as volunteers; and it is immaterial to the question whether a soldier gained a settlement under those provisions, that, after having been in due form enlisted and mustered, and having served one year and more, he was discharged as illegally drafted.

Sheffield *v.* Otis, 107 Mass., 282 (1871).

The Statute of 1866, chap. 234, sect. 1, does not oblige a town to support a State pauper whose wife has a settlement in the town, unless she is also a pauper.

Belchertown *v.* Ludlow, 110 Mass., 98 (1872).

The owner of land, for a consideration paid by A and B, executed and delivered a deed of the land to A and B, reserving and giving to C the use of the land during his life, to have and to hold the land to A and B and their heirs to their use. C entered upon the land under the deed, and occupied it for three years successively. Held, that he had an equitable freehold in the land, and had acquired a settlement in the town where the land lay, although the deed was not recorded.

Conway *v.* Ashfield, 110 Mass., 113 (1872).

Action brought to recover of defendants — inhabitants of Hopkinton — expenses incurred by plaintiffs — inhabitants of Bellingham — in the support of Montcalm S. Pettes, a pauper. James Pettes, grandfather of the pauper, had a settlement in Rehoboth, in this state, acquired by virtue of the provisions of law in force before Feb. 11, 1794; but, if he had not acquired a settlement prior to that date, he could not have acquired one after that date in Rehoboth, where he continued to reside until about 1800. About the year 1800 James Pettes removed from Rehoboth to Hopkinton, where he continued to reside until 1819, but acquired no settlement there, and, in 1819, was removed to Rehoboth as a pauper, and supported there until his death, a few years after. Jacob Pettes, son of said James, and father of the pauper, was born in Rehoboth, and came with his father to Hopkinton, being then a minor, about the year 1800, and continued to reside in Hopkinton until his death, about the year 1832, but acquired no settlement there. Hezekiah Rice, grandfather of the pauper, on his mother's side, took a conveyance of a farm in Hopkinton from said town, April 5, 1773, and from that date, to the time of his death in 1827, continued to reside in said town on said farm and acquired a settlement there by reason of owning and living on said farm. Sally Rice, daughter of said Hezekiah, and mother of the pauper, was born in Hopkinton about the year 1780, and continued to reside in that town until her death in 1842. Said Jacob Pettes and Sally Rice were married about 1810; and their son, the pauper, was born in Hopkinton about 1816, but has never acquired any settlement unless by derivation from or through his father or mother. The pauper fell into distress in Bellingham, Nov. 2, 1871. Held, that the existence of this settlement of Jacob Pettes, derived from his father, James Pettes, prevented the subsequent acquisition, by the pauper, of a settlement in Hopkinton, derived, through his mother, from Hezekiah Rice. Under the exception in the Statute of 1870, chap. 392, sect. 2, he therefore retained his settlement, derived through his father, from James Pettes, his grandfather. This settlement being neither acquired by marriage, nor defeated by virtue of the provisions of the Statute of 1870, chap. 392, sect. 2, is not within the direct operation of the Statute of 1871, chap. 379, sect. 3.

Bellingham *v.* Hopkinton, 114 Mass., 553 (1874).

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The town record, kept pursuant to the Statute of 1863, chaps. 65, 229, of the soldiers who composed the town's quota of the troops furnished by the Commonwealth to the United States, is competent evidence of the enlistment of one of such soldiers, and of payment of bounty to him. Intentional absence from military service without leave does not of itself constitute the crime of wilful desertion: there must be, in addition, the intention not to return to the service. The "wilful desertion" referred to in the Statute of 1865, chap. 230, sect. 3, is the "desertion" defined by the Articles of War, United States Statutes, 1806, chap. 20, art. 20.

Hanson *v.* South Scituate, 115 Mass., 336 (1874).

The husband of a pauper had a derivative settlement in a town, from his grandfather, acquired under provisions of law in force prior to Feb. 11, 1794. The father of the husband had also resided in the town for ten years together, and paid taxes there for five years while the husband was a minor. Neither the husband nor the pauper, after his death, had complied with the conditions necessary to acquire a settlement in their own right. Held, that the pauper had a legal settlement in the town.

Adams *v.* Ipswich, 116 Mass., 570 (1874).

The transfer, authorized by the General Statutes, chap. 71, sect. 7, of an inmate of a State lunatic hospital, from that institution to another, is properly made under the authority of the original mittimus.

Ib.

The right of the Commonwealth to recover from the town of a pauper's settlement, money paid out of the treasury for his support at a State lunatic hospital, under the General Statutes, chap. 73, sect. 24, and the Statute of 1862, chap. 223, sect. 11, is not affected by the Statute of 1870, chap. 105.

Ib.

The right of the Commonwealth to recover from a town money paid for the support of a pauper at a State lunatic hospital is not limited by the fact that the town had no notice that the pauper was chargeable to it, or of his commitment to the hospital.

Ib.

On the issue, whether a female pauper had a settlement in the town of Swansea, derived from her grandfather, there was evidence that the grandfather was born in that town in 1759. An aged witness testified that he knew a lot of land near the line between the towns of Rehoboth and Swansea, which he was accustomed in his youth to see and hear people of the town point out and speak of as the lot of the father of said grandfather, — the lot where he lived. It also appeared, in evidence, that in 1790 a part of the town of Swansea had been set off and made another town; and it was provided by statute that persons born in the limits of the new town, and becoming chargeable for support, should be the poor thereof. Held, that the burden of the proof was on the plaintiff to show that the pauper's grandfather had a settlement within the present limits of the town of Swansea, and that there was no evidence to warrant a judge, who tried the case without a jury, in so finding.

Adams *v.* Swansea, 116 Mass., 591 (1874).

In an action to enforce a statute liability, the burden is on the plaintiff to prove all the facts which, by the statutory provisions, are necessary to create the liability.

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A town furnished supplies to a person, and, in pursuance of the General Statutes, chap. 70, sect. 17, notified the overseers of the town of his settlement, requesting them to remove him. The overseers of the latter town neglected to reply to the letter within two months. Held, in an action by the first town against the second for the expenses of the support, that the defendant was not estopped by the General Statutes, chap. 70, sect. 18, to deny that the person to whom the supplies were furnished was in need of immediate relief.

New Bedford *v.* Hingham, 117 Mass., 445 (1875).

In an action under the General Statutes, chap. 73, sect. 25, by a town for expenses paid for the support of a lunatic committed to a State hospital, against the town where he has a settlement, the plaintiff must show that the lunatic was a pauper at the time the relief was furnished.

Waltham *v.* Brookline, 119 Mass., 479 (1876).

A notice to the overseers of the town of Buckland, signed in behalf of the overseers of the town of Shelburne, that "the family of A, whose legal settlement is in your town, but now residing in this town, being in needy circumstances, has applied to this Board for relief, which we have granted, and charged to your town, and shall continue so to do until you remove or otherwise provide for their support," is sufficient, under the General Statutes, chap. 70, sect. 17; and the town of Buckland, by its omission to return a written answer thereto within two months after receiving the notice, is barred, under sect. 18, from contesting the question of settlement in an action against it for the expenses of the support.

Shelburne *v.* Buckland, 124 Mass., 117 (1878).

After the Provincial Statutes of 1767 (7 G. III.), chap. 3, sect. 4, and before the Statute of 1789, chap. 14, no person could gain a settlement by residence in a town for any length of time, although not warned away, without obtaining the approbation of the town at a general meeting.

In an action by one town against another for the support of a pauper, it appeared that, by the Statute of 1850, chap. 309, the defendant town was set off from the plaintiff town; that the grandfather of the pauper in 1785 bought an estate of the clear annual income of three pounds in that part of the town which became the defendant town by the division, and resided there until his death in 1831; that his son, the father of the pauper, came to the plaintiff town with his father, and in 1815 moved with his family on to a place which is now in the plaintiff town, and in 1823 bought and moved on to a freehold estate in that part of the town which remained within the limits of the plaintiff town on its division, and resided there continuously with his family, including the pauper, until 1832, when he and his family moved to another town; and that the pauper was absent from the plaintiff town when it was divided, and his last dwelling-place in the town was in that part of it which remained the plaintiff town after its division. Held, that by the Statute of 1789, chap. 14, the grandfather acquired a settlement by his two years' ownership and residence; that this settlement was derived by the pauper; that the effect of such settlement was not changed by the fact of the removal of the father of the pauper to another part of the old town, or to another town, and of his absence when the town was divided; and that by the Statute of 1850, chap. 309, sect. 3, which provides that the two towns "shall be respectively liable for the support of all persons who now do, or hereafter shall, stand in need of relief as paupers, whose settlement was gained by, or derived from, a settlement gained or derived within their respective limits," the pauper was chargeable to the defendant town.

Malden *v* Melrose, 125, Mass., 304 (1878).

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In action for the support of a pauper, it appeared that the husband of the pauper resided on a freehold estate in the defendant town from January, 1863, to January, 1868; that during the whole of this period he was more than twenty-one years of age; that he was an alien until November, 1864, when he became a naturalized citizen; that in May, 1867, his wife became an insane pauper, and with his consent was committed to the State lunatic hospital; and that in January, 1868, he ceased to be a resident of the defendant town. Held, that by the Statutes of 1868, chap. 328, sect. 1, as amended by the Statutes of 1871, chap. 379, sect. 1, the husband of the pauper acquired a settlement in the defendant town. The Statute of 1868, chap. 328, sect. 1, as amended by the Statute of 1871, chap. 379, sect. 1, relating to the settlement of paupers, is constitutional.

Endicott *v.* Hopkinton, 125 Mass., 521 (1878).

In an action against a town for supplies furnished J. S., a pauper, the issue was whether J. S. had acquired a settlement in the defendant town under the Statute of 1874, chap. 274, by paying a tax duly assessed on his poll or estate for three years of the five years of his residence there. It appeared that in one of the three years his name was not on the valuation list, nor on the tax list made by the assessors, and delivered with the warrant to collect the same to the collector; that a clerk of the collector, without authority, and without the knowledge of the assessors, until after this action was brought, added the name of J. S. to the list, and he paid a poll tax to the collector, who paid it into the town treasury. Held, that J. S. had not been duly assessed for that year, and that the town was not estopped to deny the same.

Plymouth *v.* Wareham, 126 Mass., 475 (1879).

In an action to recover for aid furnished to the wife and minor children of John Maloney as paupers in the years 1876 and 1877, it appeared that said Maloney resided in Springfield from July, 1862, to December, 1867, and paid taxes duly assessed to him for three years within that time. He became of the age of twenty-one years in May, 1861. This is sufficient to give him a settlement in Springfield under the first section of the Statute of 1874, chap. 274, if it applied to his case. But that section is qualified by the third section, which provides that "no existing settlement shall be changed by any provision of this act, unless the entire residence and taxation herein required accrues after its passage; but any unsettled person shall be deemed to have gained a settlement upon the completion of the residence and taxation herein required, though the whole or a part of the same accrues before the passage of this act." As the residence and taxation of said Maloney in Springfield was wholly before the passage of the act, he would not thereby gain a settlement, unless he was an "unsettled person" having no existing settlement. This depends upon the question whether he had a settlement in Wales, derived from his father, Michael Maloney.

Upon this question the facts agreed are, that said Michael, a native of Ireland, came to this country in 1852, being then over the age of twenty-one years, and resided in Wales with his family, among whom was his son John, until the year 1861, when John became of age; and that, between 1852 and 1861, said Michael lived upon an estate of freehold, owned by him in said Wales, for more than three years successively. This would have given said Michael a settlement in Wales under the General Statutes, chap. 69, sect. 1, clause 4, if he had not been an alien.

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The Statute of 1868, chap. 328, sect. 1, as amended by the Statute of 1871, chap. 379, was intended to remove all disabilities arising from alienage; and it provides that "hereafter any person of the age of twenty-one years, having the other qualifications mentioned in the fourth, fifth, ninth, and twelfth clauses of the first section of chapter sixty-nine of the General Statutes, shall be deemed to have thereby gained a settlement as therein provided, although not a citizen of this or any other of the United States, whether such other qualifications shall have been acquired before or after the enactment hereof." Under those Statutes said Michael must be deemed to have gained a settlement in Wales by virtue of his three years living upon an estate of freehold owned by him, and all the legal consequences and incidents of such settlement must follow. [Endicott *v.* Hopkinton, 125 Mass., 521; Commonwealth *v.* Sudbury, 106 Mass., 268.] Among those consequences is that his minor children who were living with him would gain from their father the same settlement. The Statute of 1868, as amended, was clearly designed to be retroactive, and its effect is to fix the time when the settlement of said Michael in Wales commenced, to be at the expiration of the three years' occupancy of an estate of freehold. At that time said John was a minor living with his father, and the result is that he then gained a derivative settlement in Wales, which continues until he acquires a new one. As he had acquired no new settlement before he went to Springfield, his settlement in Wales continued, and was an "existing settlement," which was not, under the Statute of 1874, chap. 274, changed by his residence in Springfield.

Worcester *v.* Springfield, 127 Mass., 540 (1879).

On a complaint, under the General Statutes, chap. 70, sect. 5, by a town against a father for the support of his adult pauper daughter, it may properly be found that he is of "sufficient ability" to contribute to such support, where the value of his entire property, above his debts, is between $5,000 and $6,000, notwithstanding he is in poor health, unable to do hard work, has a wife and infant child dependent upon him, and his income, although he has lived in a prudent manner, is, and has been for some years, less than his expenses.

Templeton *v.* Austin C. Stratton, 128 Mass., 137 (1880).

In an action by one town against another for the support of W, a pauper, the issue was whether W had left the defendant town in 1856 with the intention of acquiring a domicile in the town of A. It appeared that W went from the defendant town to A in May, 1856, taking with him his tools for shoemaking, some household furniture, and one of his two children, and, after living there two weeks in the house of a relative, returned to the defendant town. The defendant offered to show by a witness that, in the spring of 1856, he met W at a stable in the defendant town, and W said to him that he had his goods loaded and was going to A to live; that he was going to work on a farm some of the time, and at shoemaking the rest; and that he did not see W again until he returned to the defendant town. Held, that it did not appear that the declaration accompanied the act of removal; and that it was properly excluded.

A man is under no legal obligation to support his step-child; and the fact that such child receives aid from a town as a pauper, upon the application of the step-father, will not make the latter a pauper.

Brookfield *v.* Warren, 128 Mass., 287 (1880).

In an action by a city, under the General Statutes, chap. 73, sect. 25, against a woman, to recover $479, paid for her support at a lunatic hospital, there was evidence that the defendant when out of the hospital lived with an

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intemperate husband and a lame daughter, neither of whom rendered her much assistance, and that the defendant's mental condition was such as to incapacitate her for any labor; that she owned a lot of land worth $375, which, after part of the money sued for had been paid by the plaintiff, she had conveyed to her daughter without consideration; that, after this conveyance, she effected insurance on the house in her own name, and the attorney of her guardian had received $775 from the insurance company for the destruction of the same by fire, which sum was claimed by the daughter. Held, that this evidence would warrant a finding that the defendant was not "of sufficient ability" to pay the sums expended by the plaintiff.

Newton *v.* Ann Feeley, 130 Mass., 12 (1880).

Under the Statutes of 1878, chap. 190, sect. 1, clause 10, providing that any person "duly enlisted and mustered" into the military service of the United States, as a part of the quota of a city or town, under any call of the President during the late civil war, and who fulfils the other requirements of that act, shall be deemed to have acquired a settlement in such city or town, the fact that a person has been enlisted and mustered by a false name does not prevent his acquiring a settlement; and, in an action by one town against another for his support as a pauper, his identity may be shown by parol evidence.

In an action by a town against another town for the support of a pauper, the defence was that the pauper had acquired a settlement in a third town by reason of his military service in the army of the United States as part of the quota of that town. The pauper testified that he heard that he was drafted, and went into another State to avoid the draft, and there enlisted, but was not mustered into the service; and that he then left that State, and enlisted and served as part of the quota of the town in question. Held, that this evidence did not show that he had been "proved guilty of wilful desertion" within the meaning of the Statute of 1878, chap. 190, sect. 1, clause 10.

Milford *v.* Uxbridge, 130 Mass., 107 (1881.)

Action of contract to recover the amount expended for the relief of Bridget Nolan, a pauper, whose settlement was alleged to be in the defendant city. Answer, a general denial.

The case was submitted on the following agreed facts: The plaintiff is entitled to recover the amount claimed, if Bridget Nolan had a settlement in Boston in December, 1879, and January, 1880. She married Hugh Nolan on Aug. 11, 1861, in Boston, and they have lived together as husband and wife ever since. They so lived in Boston from May, 1864, until June, 1871, during which time neither he nor she received aid as a pauper. The husband has never had a settlement in this State, nor did Bridget at the time of her marriage have any settlement in this State, nor has she ever had a settlement in this Stat unless she gained a settlement in Boston by her residence therein.

Upon these facts the Superior Court ordered judgment for the plaintiff; and the defendant appealed to this court.

ABSTRACT OF OPINION.

LORD, J. The constitutionality of the Statute of 1879, chap. 242, was argued by the defendant. The precise ground of objection to its constitutionality appears to be that, by the phraseology of the statute, there is an apparent judicial construction of the Statute of 1878, chap. 190, and, that construction being different from the construction given by this court to the same statute, it is an assumption of judicial power by the Legislature. If it be seeming, it is only

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seeming. It does not purport to give to the Statute of 1878 a construction of itself to be valid and binding during the interval between that statute and the enactment of the present; but it is present legislation, to affect only the condition of things at the time it takes effect, as a new law changing existing law. And the use of the words "shall be held to apply" does not mean that the language of that statute shall, without change or modification of it, be held to mean differently from what this court had declared it to mean, but simply that the provisions of that statute "shall hereafter be extended to," etc., — a not unusual form of language in statutes which are in addition to other statutes and in extension of the powers therein granted, taking effect from the time of its passage and not retroacting. In this view, there can be no pretence that the statute is a legislative usurpation of judicial authority.

Judgment affirmed.

Cambridge *v.* Boston, 130 Mass., 357 (1881).

The Statute of 1874, chap. 274, does not give a settlement to a person who voluntarily ceased to be a resident of the Commonwealth twenty years before it was enacted; nor by derivation to the son of such person, the son not having resided in the Commonwealth within seventeen years before, nor at any time since the enactment; nor by derivation to the wife of such son, who resides in, and after the enactment becomes a pauper within, the Commonwealth.

Fitchburg *v.* Athol, 130 Mass., 370 (1881).

In an action by one town against another for the support of a female pauper, the agreed facts on which the case was submitted stated that the pauper contracted a valid marriage with a person in a town in another State, where they both resided, and they lived there as husband and wife for three years, when he left his home and family, and had not been heard from by her since; that, in the next month after he left her, she removed to the defendant town, where, five years and eight months afterwards, she married a person who had a legal settlement therein, and they lived together as husband and wife in the plaintiff town, where he soon after deserted her and removed out of the Commonwealth. Held, that the agreed facts did not warrant a finding that the pauper's first husband was dead when she contracted her second marriage.

Hyde Park *v.* Canton, 130 Mass., 505 (1881).

Action of contract to recover the amount expended by the plaintiff town for the support of Alma Frye, a pauper.

At the trial in the Superior Court, before Allen, J., it was admitted that the pauper was the wife of Stephen Frye. On July 20, 1875, the overseers of the poor of the plaintiff sent the following notice to the defendant's overseers: "Alma Frye, wife of Stephen Frye, whose legal settlement is in your town, but now residing in this town, being in needy circumstances, has applied to this board for relief, which we have granted and charged to your town, and shall continue so to do until you remove or otherwise provide for her support. Mrs. Frye is pregnant, and will be likely to want considerable assistance; expects to be sick soon. She is at our almshouse." On July 29 the defendant's overseers sent the following reply to the plaintiff's overseers: "Yours of recent date at hand, and contents noted in regard to the circumstances of one Stephen Frye's wife, residing in your town. Under the circumstances we decline to pay your bill, and shall continue so to do until we find that the law requires us to do so. At the time of the marriage, the woman, who is '*non compos mentis*,' was an occupant of your almshouse and under your charge. We have proof that

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the inhabitants of Easton winked at the performance, saying that this would take her from their town and throw her on this. Her mother says she will support her if she will go to her; but that is your concern, not ours. If you will please search the statutes, you will find that you have no claim that will stand law." Stephen Frye was born in 1845, and lived in the defendant town and various other places, but had acquired no settlement in his own right. The plaintiff contended that Stephen had a derivative settlement in the defendant town through his father, James Frye, and his grandfather, James Frye, sen. The latter, who was born in the defendant town, died there in 1861, at the age of eighty-six years; and, subsequently to 1814, continued to reside there until his death, which occurred in the almshouse, where he had been about a year. He had eight children, who made the defendant town their home, and for the most part continued to reside there until their death. James Frye, jun., died there in 1879 at the almshouse, where he had been about a month. He lived there most of the time, and a portion of the time in other places, but had acquired no settlement in his own right. The plaintiff introduced in evidence the records of various town meetings of the defendant, at which action was taken relative to the support of James Frye, sen., and his children. The defendant offered no evidence.

The plaintiff contended that the defendant was estopped, under its reply to the plaintiff's notice, from contesting the settlement of the pauper; and that, if not so estopped, the evidence was competent and sufficient, in the absence of any controlling testimony, to establish the pauper's settlement in the defendant town. The judge declined so to rule; directed the jury to return a verdict for the defendant, and reported the case to this court.

ABSTRACT OF OPINION.

LORD, J. To determine whether the defendant is estopped to deny the pauper's settlement, the only inquiry is, Did it deny the settlement in its answer to the plaintiff's notice? There are no direct words of denial; so that the question presented for our consideration is, Does the letter, fairly construed, lead to the inference that the settlement is denied? We are constrained to say that it does not; but, on the other hand, it carries with it a strong implication that Stephen Frye, the pauper's husband, had a settlement in Wareham. The most favorable interpretation that can be put upon the letter in behalf of the defendant is this: either that the form of a marriage with Stephen Frye had been enacted by a person incompetent to contract by reason of mental imbecility, and that the marriage was therefore a nullity; or that a fraud had been perpetrated which had been participated in by the officials of the plaintiff town in such manner as prevented the liability to support the woman, as the wife of Stephen Frye, attaching to the defendant town. The defendant cannot be permitted, under the answer of the overseers, to deny the settlement of Stephen Frye.

Verdict set aside, and case to stand for trial.

Easton *v.* Wareham, 131 Mass., 10 (1881).

Action of contract to recover $69.29, expended by the plaintiff city for the support of Alice V. Phelan, an insane pauper. Answer, a general denial.

The case was submitted on the following agreed facts: The pauper was committed to the Taunton Lunatic Hospital on Aug. 27, 1879, by the authorities of the plaintiff city, she being then a pauper and a lunatic and then residing in that city; and she has ever since been supported at the hospital as a pauper. At the time of her commitment to the hospital she was twenty years old, and unmarried. Her father was James Phelan, who was born in Ireland on Oct.

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18, 1829, and emigrated to the United States in 1849. He came that year to Dorchester, where he continued to reside until 1865, when he removed to the plaintiff city, and resided there until his death on Nov. 22, 1869. He was never naturalized, was never in the military or naval service of the United States, and never had any taxable property while residing in the plaintiff city. During the whole time that he resided in Dorchester, he was assessed and paid each year a poll tax. In 1854, while residing in Dorchester, he married a person who was also an alien, and whose parents never resided in this Commonwealth. Since his death, his widow has continued to reside in the plaintiff city with her children, including Alice V., and she and her children were aided as paupers in 1869 and in 1871. On May 5, 1880, the plaintiff paid $69.29 to the Taunton Lunatic Hospital for the support of Alice V. from Oct. 27, 1879, to March 31, 1880, and forthwith gave notice of this payment to and demanded of the defendant that sum; but the defendant has refused to pay, contending that the pauper has no legal settlement in the defendant city or that portion thereof which was Dorchester. The town of Dorchester was annexed to the defendant city by the Statute of 1869, chap. 348, which statute was duly accepted by the city and the town.

Upon the facts, the Superior Court ordered judgment for the defendant; and the plaintiff appealed to this court.

ABSTRACT OF OPINION.

LORD, J. The facts agreed would have given James Phelan a settlement in Dorchester under the Statute of 1868, chap. 328, if they had occurred subsequently to the passage of that statute. It is not contended by the plaintiff that he had acquired a settlement under the statute, except by force of the amendment to it by the Statute of 1871, chap. 379, sect. 1. That statute was not passed until after his death. It was made retroactive by its terms; and the case presents these precise questions: Can a settlement be established after the death of a person who had no settlement at the time of his death, by retroactive legislation; and, if it can be, does the language of the Statute of 1871 show that it was the purpose of the Legislature to give to deceased persons settlements which they had not at the time of their death? We cannot believe that the Legislature intended by this statute to give settlements to persons long ago deceased, and by derivation to all their progeny. If such had been the purpose of the Legislature, we think it would have been manifested by clear and decisive language. If the law is applicable to a person who died before its enactment, the length of time before its enactment at which such death occurred would be wholly immaterial. Upon the general rules of interpretation, and upon the general proposition that, unless qualified, legislation affects the *status* of the living and not of the dead, we think the statute gave a settlement only to such as were alive at the time of its passage.

Judgment for the defendant.

Taunton *v.* Boston, 131 Mass., 18 (1881)

Under the Gen. Stats. chap. 73, sect. 25, a town, which has paid for the support at a State hospital of an infant lunatic whose father has a legal settlement in such town, may maintain an action at law against the father for the amount so paid.

A count upon an express promise to pay one-half of the amount expended by a town for the support of a lunatic at a State hospital is not sustained by proof of the defendant's liability under the Gen. Stats. chap. 73, sect. 25; but, if the merits of the case have been tried, and the facts necessary to create the

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defendant's liability under the statute are undisputed, an amendment of the declaration may be allowed by adding a count declaring for the amount claimed, alleging the facts necessary to make out a case of statutory liability, and averring an agreement and the plaintiff's willingness to abate one-half of the amount paid.

Arlington *v.* Daniel Lyons, 131 Mass., 328 (1881).

Action of contract to recover $223, for support furnished to Polly Jacobs or Cunningham, a pauper. Answer, a general denial.

ABSTRACT OF OPINION.

GRAY, C. J. There was no evidence that the pauper's husband ever had a settlement in Northbridge; and she could not, under the Statutes of 1874, chap. 274, gain a settlement by her own residence there during his life. (Somerville *v.* Boston, 120 Mass., 574.) Testimony that his wife thirty years ago lived with him in Northbridge for three months, "and then he went to Pennsylvania and died," without any evidence that he had not since been heard from, is no proof of the time of his death. There was, therefore, no evidence that he had died before his wife's residence for five years in the defendant town; and the plaintiff fails to support the burden resting upon it of proving the facts necessary to make out the settlement alleged. [Amherst *v.* Shelburne, 13 Gray, 341.]

Exceptions overruled.

Uxbridge *v.* Northbridge, 131 Mass., 454 (1881).

ENDICOTT, J. It is conceded that George W. Garland, the father of the pauper, Georgianna Sloan, had a settlement in Newburyport when he entered the naval service of the United States in 1864; and that by reason of his service in the navy, as part of the quota of the town of Worthington, he must be deemed to have acquired a settlement in Worthington.

The plaintiff makes no claim for support furnished Georgianna Sloan before June 20, 1879. The case must therefore be governed by the Statutes of 1878, chap. 190, sect. 1, cl. 10, which provides that "any person who shall have been duly enlisted and mustered into the military or naval service of the United States, as a part of the quota of any city or town in this Commonwealth, under any call of the President of the United States during the late civil war, or duly assigned as a part of the quota thereof, after having been enlisted and mustered into said service, and shall have duly served for not less than one year, or shall have died, or become disabled from wounds or disease received or contracted while engaged in such service, or while a prisoner in the hands of the enemy, and the wife or widow and minor children of such person, shall be deemed thereby to have acquired a settlement in such place; and any person who would otherwise be entitled to a settlement under this clause, but who was not a part of the quota of any city or town, shall, if he served as a part of the quota of this Commonwealth, be deemed to have acquired a settlement in the place where he actually resided at the time of his enlistment. But these provisions shall not apply to any person who shall have enlisted and received a bounty for such enlistment in more than one place, unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who shall have been proved guilty of wilful desertion, or to have left the service otherwise than by reason of disability or an honorable discharge." The provisions of this clause are a substantial codification of the previous statutes relating to the settlement of persons who served in the army or navy of the United States during the war of the Rebellion. Stat. 1865, chap. 230; Stat.

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1866, chap. 288; Stat. 1868, chap. 328, sect. 3; Stat. 1870, chap. 392, sect. 3; Stat. 1871, chap. 379, sect. 2. These statutes contained the words "any person who shall have continued in such service for a term not less than one year." This language relates to duration of time in the service, and not to the term of service for which the person was enlisted.

The earliest statute on the subject was after the close of the Rebellion; and there can be no question that the statutes are intended to be retroactive, and are clearly within the power of the Legislature to enact. [Endicott *v.* Hopkinton, 125 Mass., 521. Worcester *v.* Springfield, 127 Mass., 540.] At the time the Statute of 1878 was enacted, all the facts necessary to give George W. Garland, the pauper's father, a settlement in Worthington, were established. He had a settlement in Newburyport in 1864, and enlisted as a sailor in the quota of Worthington, Aug. 24, 1864, and served till Sept. 4, 1866, when he received an honorable discharge. The defendant contends that the settlement was not acquired till the discharge was obtained; and as the daughter, a minor, was emancipated by marriage before the discharge, — viz., May 31, 1866, — she has no derivative settlement in Worthington from her father, but retains her settlement in Newburyport, where her father had his settlement when she was married.

The completion of the whole term of service for which Garland enlisted was not necessary. Service for one year and a subsequent honorable discharge by the terms of the statute gave him a settlement at the expiration of the first year. The substance of the statute is, so far as applicable to this case, that every person duly enlisted and mustered into the service as part of the quota of any city or town, who shall have duly served not less than one year, "and the wife or widow and minor children of such person, shall be deemed thereby to have acquired a settlement in such place," that is, he and his family are deemed "thereby to have acquired" the settlement by virtue of the service of one year as part of the quota of any city or town. It is true, if he has left the service otherwise than by reason of disability or an honorable discharge, he has no settlement, and such leaving may be after the expiration of the year. But in this case the question of the honorable discharge, as well as the question of the required length of service, were both settled before the Statute of 1878 was enacted. Garland and his family fall within the exact terms of the statute.

The majority of the court is of opinion that a person who served and was part of the quota of the town of Worthington for more than a year, and was afterwards honorably discharged, must be deemed to have acquired a complete settlement for himself, his wife, and his minor children at the conclusion of the year.

It therefore follows that the plaintiff is entitled to recover for the support furnished Georgianna Sloan from June 20, 1879. Judgment for the plaintiff.

Newburyport *v.* Worthington (April, 1882).

The Statute of 1870, chap. 392, sect. 2, provided that any person who shall have enlisted in the naval or military service of the United States as a part of the quota of any city or town in this Commonwealth during the recent civil war, and who shall have continued in such service for a term not less than one year, "shall be deemed thereby to have acquired a settlement in such city or town."

Under this statute, Dennis Lowney, the pauper for whose support this suit is brought, undoubtedly acquired a settlement in Warwick. The plaintiff contends that this settlement was acquired in 1870; and that it cannot be lost or defeated, unless the pauper has since 1870 acquired a new settlement in some of the modes pointed out by the statutes. This argument is based upon an erroneous

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construction of the statute. The pauper to whom it applies is to be "deemed to have acquired a settlement" by his service for a term not less than one year, as a part of the quota of the town. The settlement conferred upon him is not a settlement acquired at the time of the passage of the statute, but by virtue of the retroactive force of the statute is to be treated in all respects as a settlement acquired by him at the expiration of his service for a term not less than a year. [Worcester *v.* Springfield, 127 Mass., 540.] The pauper in this case, therefore, is to be regarded as having acquired a settlement in Warwick either in December, 1865, or in August, 1866, to the same effect, for most if not all purposes, as if he had then gained a settlement by laws then in force. There is nothing in the statutes to prevent his changing this settlement and acquiring a new one in any of the modes provided by law. The statute of 1870 was not intended to repeal or change the existing laws allowing a person to gain a new settlement by residing in any town and paying taxes for the requisite time. It was intended for the benefit of the soldier, and not to disable him from gaining a settlement after he left the service in any of the modes provided by statute as any other person might. It is more in harmony with the whole system of our pauper laws to hold that the pauper, by residing in Boston from June, 1868, to January, 1879, and, by paying for six years during that time taxes assessed upon his poll or estate, thereby acquired a new settlement in Boston. Gen. Stats. c. 69, § 1, cl. 12. It follows that this action cannot be maintained. Judgment for the defendant.

Boston *v.* Warwick (April, 1882).

The following correspondence shows the accepted construction of another part of the Act of 1879, so often referred to above: —

COMMONWEALTH OF MASSACHUSETTS.

STATE BOARD OF HEALTH, LUNACY, AND CHARITY.
DEPARTMENT OF IN-DOOR POOR,
STATE HOUSE, BOSTON, JUNE 9, 1882.

A. T. WHITING, Esq.,
Chairman of Board of Directors of Public Institutions, Boston.

Dear Sir, — There is a difference of opinion between the settlement officer of your Board and this Department relative to the construction of the Settlement Acts of 1874 and 1879. . . I cite a special case. John Kehoe, who was committed to the State Workhouse June 11, 1881, was born in Boston July 28, 1857, and was consequently 21 years old July 28, 1878. His father, John Kehoe, a native of Ireland, died Jan. 4, 1878, without having acquired a settlement in Massachusetts. His mother, Jane Kehoe, who had no settlement under laws existing prior to 1874, resided continuously at 113 Beach street, Boston, from 1860 to the present time, without receiving public aid, and consequently was settled in Boston by the Act of 1874, as amended by that of 1879. The claim of this Department is, that Mrs. Kehoe's settlement in Boston dates from a period prior to her son's majority; i.e., "upon the *completion* of the *residence* herein required, though the whole or a part of the same accrues before the passage of this act." (See city of Worcester *v.* city of Springfield, Sept. law term, 1879; also Newburyport *v.* Worthington, reported within two or three months.)

Very respectfully yours,
S. C. WRIGHTINGTON,
Superintendent of In-door Poor.

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CORPORATION COUNSEL'S OFFICE, 2 PEMBERTON SQUARE,
BOSTON, JUNE 9, 1882.

WM. H. HODGKINS, Esq.,
Clerk of Directors of Public Institutions.

Dear Sir, — Having reference to your letter of to-day regarding the liability of the city for the support of John Kehoe, upon the case stated in Mr. Wrightington's letter herewith returned, I have to say that, in my opinion, the view taken by Mr. Wrightington is correct. The Supreme Court has lately reaffirmed the doctrine of Worcester *v.* Springfield in the case of Boston *v.* Warwick, not yet reported; and under these decisions I think the city is liable for the support of Kehoe.

Very respectfully,
E. P. NETTLETON,
Corporation Counsel.

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CHAPTER 84.

OF THE SUPPORT OF PAUPERS BY CITIES AND TOWNS.

SECTION

1. Towns to support poor.
2. Powers and duties of overseers of the poor.
3. Overseers in cities to place pauper children, etc., in families or asylums, etc.
4. Such children not to be retained in almshouses, unless state paupers, etc.
5. Further powers of overseers.
6. Certain kindred to support, etc.
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10. Court may order with whom pauper shall live.
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SECTION

22. Institutions intrusted with care of children, etc., to comply with laws governing officers of towns, etc.
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36. to make returns every tenth year to state board, etc.
37. Penalty on towns for failure of overseers, etc.
38. Overseers to make semi-annual returns to state board, concerning children.

SECTION 1. Every city and town shall relieve and support all poor and indigent persons lawfully settled therein, whenever they stand in need thereof.

Towns to support poor. G. S. 70, § 1. 9 Met. 496.

SECT. 2. The overseers of the poor shall have the care and oversight of all such poor and indigent persons so long as they remain at the charge of their respective cities or towns, and shall see that they are suitably relieved, supported, and employed, either in the workhouse or almshouse, or in such other manner as the city or town directs, or otherwise at the discretion of said overseers. They may remove to the almshouse such children as are suffering destitution from extreme neglect of dissolute or intemperate parents or guardians, except as hereinafter provided.

Powers and duties of overseers of the poor. G. S. 70, § 2. 8 Allen, 73. 106 Mass. 262. 128 Mass. 148.

SECT. 3. In every city, said overseers shall place every pauper child in their charge, and over four years of age, in some respect-

Overseers in cities to place pauper children,

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etc., in families or asylums, etc. 1879, 103, § 1.

able family in the state, or in some asylum therein, to be supported there by the city, according to the laws relating to the support of the poor, until they can be otherwise cared for. And the overseers shall visit such children, personally or by agent, at least once in three months, and make all needful inquiries as to their treatment or welfare.

Such children not to be retained in almshouses, unless state paupers, etc. 1879, 103, § 2.

SECT. 4. No such child, who can be cared for as above directed without inordinate expense, shall be retained in an almshouse, unless he is a state pauper, or idiotic, or otherwise so defective in body or mind as to make his retention in an almshouse desirable, or unless he is under the age of eight years, and his mother is an inmate thereof, and is a suitable person to aid in taking care of him.

Further powers of overseers. G. S. 70, § 3.

SECT. 5. The overseers of the poor shall have the same power and authority over persons placed under their care, which directors or masters of workhouses have over persons committed thereto.

Certain kindred to support, etc. G. S. 70, § 4. 10 Cush. 239. 1 Allen, 23. 6 Allen, 586. 128 Mass. 139, 288.

SECT. 6. The kindred of such poor persons, in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living in this state and of sufficient ability, shall be bound to support such paupers, in proportion to their respective ability.

Superior court to assess such kindred. G. S. 70, § 5. 10 Cush. 239. 11 Cush. 24. 10 Allen, 68. 5 Gray, 28. 128 Mass. 137.

SECT. 7. The superior court in the county where any one of such kindred to be charged resides, upon complaint of any city, town, or kindred who has been at expense for the relief and support of such pauper, may on due hearing assess and apportion upon such of the kindred as it finds to be of sufficient ability, and, in proportion thereto, such sum as it shall deem reasonable for or towards the support of the pauper to the time of such assessment; and may enforce payment thereof by execution in common form: *provided*, that such assessment shall not extend to any expense for relief afforded more than six months previous to the filing of the complaint.

may also assess for future expenses. G. S. 70, § 6.

SECT. 8. The court may further assess and apportion upon said kindred such weekly sum as it shall deem sufficient for the future support of the pauper, to be paid quarterly until the further order of court; and upon application from time to time of the city, town, or kindred, to whom the same is ordered to be paid, the clerk of said court shall issue and may renew an execution for the arrears of any preceding quarter.

Costs, how taxed. G. S. 70, § 7.

SECT. 9. When the court adjudges two or more of the kindred of a pauper to be of sufficient ability to contribute to his support, it shall tax no more costs against any one respondent than is occasioned by his default or separate defence.

Court may order with whom pauper shall live.

SECT. 10. The court may further order with whom of such kindred, that may desire it, such pauper shall live and be relieved, and

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such time with one, and such time with another, as it shall deem proper, having regard to the comfort of the pauper as well as the convenience of the kindred. G. S. 70, § 8.

SECT. 11. The complaint made as provided in this chapter shall be filed in the clerk's office, and a summons shall be thereupon issued requiring the kindred therein named to appear and answer thereto; which summons shall be directed to any officer qualified to serve civil process between the parties, and served like an original summons, fourteen days at least before the sitting of the court to which it is returnable. Proceedings on complaints. G. S. 70, § 9.

SECT. 12. Upon suggestion that there are other kindred of ability not summoned in the original process, they may be summoned, and after due notice, whether they appear or are defaulted, the court may proceed against them in the same manner as if they had been summoned upon the original complaint. Other kindred may be summoned. G. S. 70, § 10.

SECT. 13. The court may take further order from time to time in the premises, upon application of any party interested, and may alter such assessment and apportionment according to circumstances; and upon all such complaints may award costs to either party as justice requires. Court may make new orders. G. S. 70, § 11. 10 Allen, 68.

SECT. 14. The overseers of the poor, in their respective places, shall provide for the immediate comfort and relief of all persons residing or found therein, having lawful settlements in other places, when they fall into distress and stand in need of immediate relief, and until they are removed to the places of their lawful settlements; the expenses whereof, incurred within three months next before notice given to the place to be charged, as also of their removal, or burial in case of their decease, may be recovered by the place incurring the same against the place liable therefor, in an action at law, to be instituted within two years after the cause of action arises, but not otherwise. Overseers to provide for immediate relief of strangers, etc. G. S. 70, § 12. 2 Pick. 341. 13 Met. 192. 11 Gray, 107. 1 Allen, 23. 8 Allen, 73. 103 Mass. 119.

SECT. 15. A recovery in such action shall bar the place against which it is had from disputing the settlement of such pauper with the place so recovering in any future action brought for his support. Recovery to establish settlement. G. S. 70, § 13. 103 Mass. 117.

SECT. 16. When a person is supported in a place other than that in which he has his settlement, the place liable for his support shall not be required to pay therefor more than at the rate of two dollars a week, if it causes the pauper to be removed within thirty days from the time of receiving legal notice that such support has been furnished. 128 Mass. 148. 8 Cush. 371. Liability when pauper removed, etc. G. S. 70, § 14. 1873, 213. 4 Pick. 45. 7 Pick. 155. 21 Pick. 349. 13 Met. 198.

SECT. 17. The overseers of the poor of each place shall also relieve, support and employ all poor persons residing or found therein, having no lawful settlements within this state, until their removal to the state almshouse, and in case of their decease shall decently bury Overseers to support, and in case of decease bury, indigent strangers. Compensation therefor.

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G. S. 70, § 15. 1878, 256. 1867, 97.

them; they shall also decently bury all such persons who have died without means of support, but without applying for public relief while living, and all unknown persons found dead, except such strangers as are buried by medical examiners under the provisions of section twenty of chapter twenty-six; the expense whereof may be recovered of their kindred, if they have any chargeable by law for their support, in the manner herein before provided; and if in case of their burial the expense thereof is not paid by such kindred, there shall be paid from the treasury of the commonwealth ten dollars for the funeral expenses of each pauper over twelve years of age, and five dollars for the funeral expenses of each pauper under that age.

Temporary aid to state paupers, when, etc. How repaid. 1877, 183.

SECT. 18. A city or town may furnish temporary aid to poor persons found therein, having no lawful settlements within the state, if the overseers of the poor deem it for the public interest; but, except in cases of sickness, not for a longer period than four weeks at one time, or to a greater amount than one dollar a week for each person, or five dollars a week for each family; and the overseers shall in every such case give immediate notice by mail to the state board of health, lunacy and charity, which board shall examine the case and direct as to the continuance of such aid, or removal to the state almshouse, or to some place out of the state, either before or after removal to the state almshouse, according to law. A detailed statement of expenses so incurred shall be rendered, and after approval by the state board such expenses shall be paid from the state treasury.

Strangers may be required to work, in return for food and lodging; in case of refusal, to be deemed vagrants, etc. 1875, 70.

SECT. 19. The overseers of the poor or the keepers of almshouses acting under their directions may require any person, not a resident of the town or city, applying to them for and receiving either food or lodging, in an almshouse or other place, to perform a reasonable amount of labor in return therefor, and may detain such person until such labor is performed, but not beyond the hour of eleven in the forenoon of the day succeeding his application; and if any such person refuses or neglects when so required to perform such labor suited to his age, strength and capacity, or wilfully damages any property of such town or city in the charge of such overseers or other officers, he shall be deemed a vagrant, and be punishable as such.

Towns may establish hospitals. 1873, 192.

SECT. 20.* A city or town may erect, establish and maintain a hospital for the reception of persons who by misfortune or poverty require relief during temporary sickness. City councils and selectmen may make such ordinances, rules and regulations as they may deem expedient for the appointment of trustees and all other officers, agents and servants necessary for managing such hospital.

The sections marked (*) contain provisions affecting the public health, and might also be included in the Health Laws.

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Deserted and destitute children may be placed in care of Massachusetts Infant Asylum, etc. 1867, 230, § 3.

SECT. 21. The overseers of the poor of a city or town, and the superintendent and board of trustees of the state almshouse, may place deserted and destitute infants in the care of the Massachusetts Infant Asylum, and such sum as may be agreed upon shall be paid for the temporary support of such infants; but such overseers and the state board of health, lunacy and charity shall use all reasonable care to collect the cost of such temporary support from parties justly chargeable with the same, when they can be ascertained, and to remove those infants not born or not having a settlement in this state.

Institutions intrusted with care of children, etc., to comply with laws governing officers of towns, etc. 1870, 92, § 1.

SECT. 22. When town, city or state officers charged with the custody of destitute children delegate to an incorporated charitable institution the custody of an infant less than four years of age, such institution shall be held to comply with all the provisions of law, and be subject to all the restrictions concerning such infant that may be required by law of the officers so delegating the trust.

may agree with persons for care and support of children abandoned by parents; form of aggreement, etc. 1870, 92, § 3.

SECT. 23. When an infant lawfully in the custody of a charitable institution as aforesaid has been wilfully deserted and abandoned for more than four months by its parents or natural guardians, the officers of such institution may procure any suitable person in this commonwealth to take and support such child for such time as may be specified in a written agreement made for that purpose, not exceeding the time when the child shall be fourteen years old. The form and conditions of such agreement shall be prescribed by the state board, and the agreement, with a descriptive list of the origin, name, age and person of the infant, so far as known, and the name, residence and recommendations of the person taking the child, shall be returned to the state board in such form as it may prescribe. All such children shall be subject to the visitation and control provided by law for children put out or apprenticed from state institutions; but nothing herein contained shall diminish the legal rights of parents, guardians and next of kin.

Overseers not to remove minors from state, without authority from judge of probate court; nor to withold information, etc. 1868, 279, § 1.

SECT. 24. Overseers of the poor shall not remove a minor under their control, beyond the limits of the commonwealth, nor allow such removal, without the approval of the judge of the probate court, granted upon application and after due notice to all parties interested, and a hearing, unless such minor has a settlement in another state. Nor shall they withhold information concerning the maintenance of such minor from any person entitled to receive the same.

Penalty. 1868, 279, § 2.

SECT. 25. Any overseer of the poor who violates the provisions of the preceding section shall be punished by fine not exceeding five hundred dollars.

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Pauper settled here may be removed to place of later settlement out of the state.
1868, 328, § 2.

SECT. 26. If a person who has actually become chargeable as a pauper to a city or town in which he has a settlement, subsequently acquires a settlement in a place out of this commonwealth, the overseers of the poor of such city or town may cause him to be removed to said place of subsequent settlement, by a written order directed to any person therein designated.

Towns liable to individuals.
G. S. 70, § 16.
7 Met. 216.
9 Met. 492.
4 Cush. 199.
6 Cush. 399.
9 Allen, 135.
14 Allen, 30.

SECT. 27. Every city and town shall be held to pay any expense necessarily incurred for the relief of a pauper therein by any person who is not liable by law for his support, after notice and request made to the overseers thereof, and until provision is made by them. 105 Mass. 533. 113 Mass. 47. 116 Mass. 353. 124 Mass. 286.

Paupers may be removed to place of settlement.
G. S. 70, § 17.
23 Pick. 156.
4 Met. 433.
13 Met. 199.
5 Allen, 545.
9 Allen, 91.
102 Mass. 216.

SECT. 28. The overseers of any place may send a written notification, stating the facts relating to any person actually become chargeable thereto, to one or more of the overseers of the place where his settlement is supposed to be, and requesting them to remove him, which they may do by a written order directed to any person therein designated, who may execute the same.
103 Mass. 117. 124 Mass. 117.

Process in case of removal.
G. S. 70, § 18.
23 Pick. 156.
9 Allen, 91.
103 Mass. 117.
117 Mass. 445.
124 Mass. 117.

SECT. 29. If such removal is not effected by the last mentioned overseers within two months after receiving the notice, they shall within said two months send to one or more of the overseers requesting such removal a written answer, signed by one or more of them, stating therein their objections to the removal; and if they fail so to do, the overseers who requested the removal may cause the pauper to be removed to the place of his supposed settlement, by a written order directed to any person therein designated, who may execute the same; and the overseers of the place to which the pauper is so sent shall receive and provide for him; and such place shall be liable for the expenses of his support and removal, to be recovered in an action by the place incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action.

Effect of notifications, etc., sent by mail.
G. S. 70, § 19.

SECT. 30. The notification and answer mentioned in the two preceding sections may be sent by mail; and such notification or answer, directed to the overseers of the poor of the place intended to be notified or answered, postage prepaid, shall be deemed a sufficient notice or answer, and shall be considered as delivered to the overseers to whom it is directed, at the time when it is received in the post office of the place to which it is directed and in which the overseers reside.

Penalty for leaving paupers where not settled, etc.
G. S. 70, § 20.
16 Mass. 393.
1 Pick. 465.

SECT. 31. Whoever brings into and leaves a poor and indigent person in any place in this State, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such place with his relief or support, shall forfeit a sum

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not exceeding one hundred dollars for each offence, to be recovered in an action of tort to the use of such place.

21 Pick. 83. 102 Mass. 216. 105 Mass. 336.

Sect. 32. Upon the death of a pauper who at the time of his decease is actually chargeable to a place within this state, the overseers of the poor of such place may take possession of all his real and personal property; and if administration is not taken upon his estate within thirty days after his decease, the overseers may in their own names sell and convey so much thereof as may be necessary to repay the expenses incurred for the pauper. If any part of such property is withheld from said overseers, they may in their own names sue for and recover possession of the real estate, and shall have the same remedy for the recovery of the personal estate or its value that an administrator might have in like case.

Overseers may sell estate of deceased pauper, and apply proceeds, etc. G. S. 70, § 21. 1 Allen, 23.

Sect. 33. In all actions and prosecutions founded on the provisions of the preceding sections, the overseers of the poor of any place, or any person appointed by writing under their hands, shall appear, prosecute, or defend the same to final judgment and execution in behalf of such place.

may prosecute, etc. G. S. 70, § 22.

Sect. 34. Overseers of the poor shall keep full and accurate records of the paupers fully supported, the persons relieved and partially supported, and the travellers and vagrants lodged at the expense of their cities and towns, together with the amount paid for such support and relief.

to keep records of paupers, etc., supported and relieved. 1867, 209, § 1.

Sect. 35. They shall make an annual return of the numbers of such persons supported and relieved, with the cost of such support and relief, and a record of those fully supported, to the state board of health, lunacy and charity in April in each year, for the year ending on the thirty-first day of March preceding.

Overseers to make annual return to state board, etc. 1875, 216.

Sect. 36. In the year eighteen hundred and eighty-five and in every tenth year thereafter the return of the overseers of the poor shall contain true and correct answers to the following inquiries:—

to make returns every tenth year to state board, etc. G. S. 70, § 23. 1875, 216, § 1.

What number of persons have been relieved or supported by your town during the year ending September 30? Of those, how many have a legal settlement in your town? How many are foreign born? How many of the foreign born are from England and Ireland? How many state paupers have you sent to the state almshouse? How many of the poor assisted in your town or sent to state almshouse were foreigners? How many of your insane do you support in state lunatic hospitals? How many of your idiotic poor are in the Massachusetts School for Idiotic and Feeble-minded Youth? Have you an almshouse? What number of acres of land is attached to your almshouse? What is the estimated present value of your almshouse establishment? Real estate? Personal? What number of persons have been supported in your almshouse during the whole or any part of the year? What is the average number supported in the almshouse? What is the average weekly cost of supporting each pauper in the almshouse? What number

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of persons have been inmates of your almshouse who are unable to perform any kind or amount of labor? What is the estimated value of all the labor performed by the poor in your almshouse? How many persons, including their families, have you supported out of the almshouse during the whole or a portion of the year? What is the average weekly cost of supporting each pauper out of the almshouse? How many have you aided out of the almshouse? How many have you supported or relieved who were insane? How many who were idiots? What number of persons, relieved or supported during the year, in your town, have become dependent by reason of insanity or idiocy? What number of your poor, supported at the public charge, have been made dependent by their own intemperance? What number by the intemperance of those who ought to have been their supporters? What is the total net amount of expense of supporting or relieving the poor in your town during the year, including interest on your almshouse establishment? How many are supported in your almshouse at the present time? How many are supported out of the almshouse at the present time? How many are assisted out of the almshouse at the present time?

They shall, at the same time, make correct returns of all children in such city or town under fourteen years of age who are supported at the public charge, specifying therein the name, age, and sex of each.

Penalty on towns for failure of overseers, etc. 1867, 209, § 3.

SECT. 37. If the overseers of a town or city refuse or neglect to comply with the requirements of the three preceding sections, such town or city shall forfeit one dollar for each day's neglect, and the amount of such forfeiture shall be deducted from any sum to which said town or city may be entitled in reimbursement for relief of state paupers as provided in sections twenty-six and thirty-one of chapter eighty-six; and in case no such reimbursement shall be due to said town or city, the forfeiture shall be deducted from any money which may be due to it from the state.

Overseers to make semi-annual returns to state board, concerning children. 1871, 370, § 1.

SECT. 38. Overseers of the poor shall make and forward returns on or before the tenth days of January and July in each year, to the state board, concerning all minor children above the age of four years who are supported at the expense of such city or town, in an almshouse or elsewhere, on the first day of said months. Said returns shall be made in such form and shall contain such information respecting said minor children as may be prescribed by the state board.

[The following statute passed in 1882 relates more particularly to the subject matter of this chapter, especially to sections 21–25, and is therefore printed here rather than in connection with chapter 86 of the Public Statutes to which its first section refers.]

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[Chapter 181.]

AN ACT RELATING TO INDIGENT AND NEGLECTED CHILDREN.

Be it enacted, etc., as follows:

SECTION 1. Section forty-six of chapter eighty-six of the Public Statutes, relative to the age to which certain infants who are state paupers shall be provided for by the state board of health, lunacy and charity, is amended in the sixth line by striking out the word "two," and inserting in place thereof the word "three."

SECT. 2. The state board of health, lunacy and charity shall make all necessary provision for the care and maintenance of all poor and indigent children in need of immediate relief, between the ages of three and sixteen years, having no lawful settlement in this commonwealth, at the state primary school or elsewhere, and for that purpose shall have the same authority to commit such children to the state primary school as overseers of the poor now have to commit them to the state almshouse.

SECT. 3. Whenever it shall be made to appear to any court or magistrate that within his jurisdiction any child under fourteen years of age, by reason of orphanage, or of the neglect, crime, drunkenness or other vice of his parents, is growing up without education or salutary control, and in circumstances exposing him to lead an idle and dissolute life, or is dependent upon public charity, such court or magistrate shall, after notice to the state board of health, lunacy and charity, commit such child, if he has no known settlement in this commonwealth, to the custody of said board, and if he has a known settlement then to the overseers of the poor of the city or town in which he has such settlement, except in the city of Boston, and if he has a settlement in said city, then to the directors of public institutions of said city, until he arrives at the age of twenty-one years, or for any less time; and the said board, overseers and directors are authorized to make all needful arrangements for the care and maintenance of children so committed in some state, municipal or town institution, or in some respectable family, and to discharge such children from their custody whenever the object of their commitment has been accomplished.

SECT. 4. Whenever any of the class of children mentioned in section three are inmates of the state almshouse, application for their commitment, in the manner provided in said section, shall be made to the justice of the police court of Lowell.

[*Approved April 29, 1882.*

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[The following forms have been adopted for use in enforcing the above law (chapter 181 of 1882):—]

COMMONWEALTH OF MASSACHUSETTS.

To any of the Justices of the ,
of the County of , *in behalf of the Commonwealth of Massachusetts, on oath complains:*

THAT , of ,
in the County of , minor , having no known settlement in said Commonwealth, living and residing in and within the Judicial District of said Justice, child under fourteen years of age, and that said child , by reason of orphanage or of the neglect, crime, drunkenness or other vice of parents, growing up without education and salutary control, and in circumstances exposing to an idle and dissolute life, and dependent upon public charity, against the peace of said Commonwealth and the form of the Statute in such case made and provided.

TO WIT:

Taken and sworn to, this day of ,
in the year of our Lord one thousand eight hundred and eighty-
Before me,

COMMONWEALTH OF MASSACHUSETTS.

TO WIT:

To the Sheriff of our said County or either of his Deputies, or to any Constable or Police Officer of any City or Town in said County, GREETING:

These are in the name of the Commonwealth of Massachusetts to command you, and each of you, upon sight hereof, to take and bring before ,
at , in said ,
the bod of ,
of aforesaid, minor , if he be found within your precinct, to answer to the Commonwealth on complaint of ,
of said , this day made on oath before said Justice, that the said ,
at said , within the jurisdiction of said Justice, child less than fourteen years of age, and , by reason of orphanage or of neglect, crime, drunkenness or other vice of parents, growing up without education and salutary control, and in circumstances exposing to an idle and dissolute life, and dependent on public charity, against the peace of the Commonwealth and the form of the Statute in such case made and provided.

Hereof fail not at your peril.

WITNESS my hand and seal at ,
this day of , in the year of our Lord one thousand eight hundred and eighty-

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COMMONWEALTH OF MASSACHUSETTS.

To Wit:

To the Sheriff of our said County or either of his Deputies, or to any Constable or Police Officer of any City or Town in said County, Greeting:

These are in the name of the Commonwealth of Massachusetts to command you, and each of you, forthwith to convey and deliver into the custody of the state board of health, lunacy and charity, the bod of , of and living in said County, minor , who now before , and of whom, after due trial, it has been satisfactorily proven child under fourteen years of age, and growing up by reason of orphanage, or of the neglect, crime, drunkenness or other vice of parents, without education and salutary control, and in circumstances exposing to an idle and dissolute life, and dependent upon public charity in said , contrary to the form of the Statute in such case made and provided.

And it appearing to our Justice, in his discretion, that the said proper subject for committal to the custody of the State Board of Health, Lunacy and Charity, as provided and required by law.

It is therefore ordered by me, the said Justice, that the said be committed to the custody of said Board until he arrive at the age of twenty-one years, or for the term of from the date hereof.

The care and maintenance of said child to be provided for by said Board as by law required. And make return of this precept with your doings thereon.

And you, the said Board, are hereby commanded to receive the said into your care and custody, and safely keep until the expiration of the term aforesaid, or be otherwise discharged in due course of law.

Hereof fail not at your peril.

Witness my hand and seal this day of , in the year of our Lord one thousand eight hundred and eighty-

A true copy attest:

[The following Statute, also passed in 1882, relates to matters contained in chapters 84 and 86 of the Public Statutes; but is printed here as being more appropriate to this place, and so as to precede chapter 85.]

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[Chapter 270.]

AN ACT FOR THE BETTER PROTECTION OF CHILDREN.

Be it enacted, etc., as follows: —

SECTION 1. Whoever, being the parent of a child less than two years old, abandons it within or without any building in this commonwealth, or having made a contract or provision for the board or maintenance of such child, absconds or fails to perform any such contract or provision, and for a period of four weeks after such absconding or failure neither visits nor removes such child, nor during said period notifies the overseers of the poor of the city or town where such parent resides of his or her inability to support such child, shall be punished by imprisonment, if a man, in the house of correction, and if a woman, in the reformatory prison for women, not exceeding two years, or, in case death shall result from such abandonment, not exceeding five years; but this act shall not apply to cases in which the omission to visit, remove or support such child, or to give such notice, arises from physical or mental disability.

SECT. 2. Every person who knowingly and with wrongful intent aids or abets the abandonment of any such child, as set forth in the preceding section, shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding two years in the house of correction.

SECT. 3. Every person who receives for board a child under the age of one year, knowing or having reason to believe it to be illegitimate, shall forthwith notify the overseers of the poor of the city or town in which he resides of the fact of such reception, and, if requested by such overseers, shall also so notify the state board of health, lunacy and charity. The parent or parents of such child shall, when called upon by said board or such overseers, give to said board or such overseers satisfactory security for the maintenance of such child. The parents of such children shall, when called upon, give true answers to the said state board, or any of its officers, as to the residence, parentage and place of settlement of such children, so far as their knowledge extends. Whoever violates any of the provisions of this section shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the house of correction not exceeding one year.

SECT. 4. Whoever unreasonably neglects to provide for the support of his minor child shall be punished by fine not exceeding twenty dollars or by imprisonment in the house of correction not exceeding six months. [*Approved May 26, 1882.*

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CHAPTER 85.

OF THE MAINTENANCE OF BASTARD CHILDREN.

SECTION.

1. Complaint, how to be made.
2. Who may complain, etc., if woman refuses.
3. If woman is in state almshouse, complaint where made.
4. Person arrested may be released on giving bond, etc.
5. Form of bond; how approved.
6. Hearing on complaints may be continued, and bond taken.
7. On failure to appear, etc., accused to be defaulted, and case sent to superior court.
8. Surety on bond given under section six may surrender principal; new bond.
9. Accused may be held to answer by bond, etc.
10. Written notice to be sent to complainant, etc.
11. Surety may surrender principal to keeper of jail, when.
12. Accused discharged, how, when complaint not entered.
13. For what reasons the cause may be continued, etc.
14. Defendant discharged, how, after commitment.
15. Trial by jury, and order of court thereon.
16. Mother of child may testify, etc.
17. Complaint not to be withdrawn without consent, etc.
18. Liability for support.
19. How case may be compromised.
20. Person charged as father may take poor debtor's oath.
21. Mother of child, etc., may have remedy by action.
22. Prosecutions to be conducted as in civil cases, except, etc.
23. Complainant not required to support defendant in prison.

Complaint, how to be made.
G. S. 72, § 1.
3 Met. 209.
13 Met. 372.
6 Cush. 111.
13 Gray, 538.
15 Gray, 50.
2 Allen, 402.
3 Allen, 149, 479.
4 Allen, 365, 435.
5 Allen, 209, 301
9 Allen, 459.
10 Allen, 389.
13 Allen, 472.
14 Allen, 155.
103 Mass. 55, 192.
110 Mass. 152.
119 Mass. 167.

SECTION 1. When a woman who has been delivered of a bastard child, or is pregnant with a child which if born alive may be a bastard, makes a complaint to a police, district or municipal court, or trial justice, and desires to institute a prosecution against the person whom she accuses of being the father of the child, the court or trial justice shall take her accusation and examination, in writing under oath, respecting the person accused, the time when and place where the complainant was begotten with child, and such other circumstances as the court or trial justice deems necessary for the discovery of the truth of such accusation. The court or trial justice may issue a warrant against the person accused, returnable before the same or any other court or trial justice having jurisdiction thereof in the county. The warrant shall run throughout the state, and any officer to whom it is directed may serve it and apprehend the defendant in any county.

Who may complain, etc., if woman refuses.
G. S. 72, § 2.
1879, 291, § 3.
3 Allen, 477, 481.
8 Allen, 334.
10 Allen, 389, 394.

SECT. 2. If a woman entitled to make a complaint refuses or neglects so to do when requested by an overseer of the poor of the place where she resides or has her settlement, or one of the state board of health, lunacy and charity, or the superintendent of the state almshouse, or a person authorized by either of them to make the request, or either of her parents, or her guardian, the person so requesting may make the complaint; and when already made, if she refuses or neglects to prosecute the same, either of said per-

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sons may prosecute the case to final judgment, for the benefit of the parent, guardian, city, town or state.

If woman is in state almshouse, complaint where made. G. S. 72, § 3.

SECT. 3. When a woman is an inmate of the state almshouse, a complaint by her or in her behalf may be made either in the county where she then is, or where she last had her usual place of abode before becoming such inmate, and the warrant shall be returnable in the latter county or the county where the defendant resides. When a complaint is made in the county of Suffolk, by or in behalf of an inmate of the house of industry at Deer Island, the warrant shall be returnable before the municipal court of the city of Boston.

Person arrested may be released on giving bond, etc. 1871, 42, § 1.

SECT. 4. A person arrested upon such warrant may be released upon giving a bond, with sufficient sureties in not less than three hundred dollars, for his appearance before the court or trial justice having cognizance of the complaint, at a time to be specified in said bond.

Form of bond; how approved. 1871, 42, § 2. 1875, 109.

SECT. 5. The bond shall be made to the party for whose benefit the complaint is made or prosecuted, and the sureties may be examined, and the bond approved, by a bail commissioner, master in chancery, or a justice of a police, district or municipal court.

Hearing on complaints may be continued, and bond taken 1863, 127, § 1.

SECT. 6. The court or trial justice may continue from time to time the hearing of such complaint and may take a bond from the accused, in a sufficient sum, and with sufficient surety or sureties, to the complainant, for the appearance of the accused before the court or trial justice at any hearing of the complaint at any subsequent time to which it may be continued, and from time to time until the final disposition of the complaint before the court or trial justice, and not depart without leave.

On failure to appear, etc., accused to be defaulted, and case sent to superior court. 1863, 127, § 2.

SECT. 7. If the accused does not appear before the court or trial justice at any time to which the hearing of the complaint is continued, or departs without leave, his default shall be recorded, and the bond, with a copy of the complaint and warrant, and also a copy of the record of the court or trial justice in the case, shall be transmitted to the superior court in the same county, where the complaint shall be entered and proceeded with in accordance with the provisions hereof regulating the mode of proceedings in like cases in the superior court; and if the accused is adjudged by the court, on a final hearing of the complaint, to be the father of the child of which he is accused, the bond shall be security for the performance by him of any order of the court under the provisions of section fifteen.

Surety on bond given under section six may surrender.

SECT. 8. The surety in a bond given under the provisions of section six may surrender the principal to the court or trial justice before whom the complaint is pending, or, if the complaint is pend-

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ing therein, to the superior court at any term thereof, and in case of such surrender the bond shall be void, and either of said courts or trial justice, to whom the surrender is made, may order a new bond to be taken from the accused, with sufficient surety or sureties, and the accused shall stand committed until he gives such new bond; but if the surrender is made in the superior court, the new bond shall be for the appearance of the accused to answer to the complaint in said court, and abide the order of the court thereon.

principal; new bond. 1863, 127, § 3.

SECT. 9. The court or trial justice before whom the warrant is returnable may after due hearing require the accused to give bond, with sufficient sureties, to appear and answer to the complaint at the next term of the superior court holden for the transaction of civil business, and abide the order of court thereon; and may order him to be committed until such bond is given.

Accused may be held to answer by bond, etc. G. S. 72, § 4. 7 Mass. 340, 396. 10 Met. 5. 13 Met. 246, 372. 8 Cush. 294. 2 Gray, 199. 10 Gray, 249. 3 Allen, 153.

103 Mass. 233. 110 Mass. 152. 113 Mass. 268. 116 Mass. 198, 263, 360. 119 Mass. 167

SECT. 10. When the court or trial justice requires the accused to give bond under the provisions of the preceding section, or when the accused makes default as mentioned in section seven, the court or trial justice shall, before the next term of the superior court in the same county, if the complaint was made by the woman entitled to make the same under the provisions of section one, send written notice by mail or otherwise to the person authorized to make the complaint under the provisions of section two that such complaint has been made, and that the accused has been required to give bond, or has made default, as the case may be.

Written notice to be sent to complainant, etc. 1863, 127, § 4.

SECT. 11. A surety upon a bond given under the provisions of section six may, if the court in which the complaint is pending is not in session, surrender his principal to the keeper of any jail in the county in which the complaint is pending. The surety shall deliver to the jailer a copy of the bond, attested by the officer in whose custody it is, which shall be a sufficient warrant to the jailer, although the surrender and commitment prove to be unlawful on the part of the surety. And such surrender shall have like effect with the surrender into court provided for by section eight, and like proceedings may be had thereafter.

Surety may surrender principal to keeper of jail, when. 1878, 48.

SECT. 12. When the party accused is committed under the provisions of section nine, and the complaint is not entered at the term of the superior court at which he was required to appear, he may make application to said court, setting forth the facts, and asking to be discharged; and if it appears, after such notice as the court may require, that there is no ground to hold him to answer further to the prosecution, the court shall order him to be discharged.

Accused discharged, how, when complaint not entered. 1865, 161.

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For what reasons the cause may be continued, etc.
G. S. 72, § 5.
12 Pick. 196.
3 Cush. 452.
3 Allen, 151, 153.

SECT. 13. If, at the term of the superior court to which the accused is held to answer, such woman has not been delivered, or is not able personally to attend, or if there is any other sufficient reason therefor, the court may order a continuance of the cause from term to term, as it deems necessary; and the bond shall remain in force until final judgment: *provided*, that if the sureties in the bond at any term of said court object to being longer held liable, or if the court for any cause deems it proper, the court may order a new bond to be taken; and the defendant shall stand committed until he gives such new bond.

Defendant discharged, how, after commitment.
G. S. 72, § 6.

SECT. 14. When a person is committed on account of inability to give bond, he shall be discharged from prison on giving at any time thereafter the required bond, approved in the same manner as bail bonds.

Trial by jury, and order of court thereon.
G. S. 72, § 7.
5 Mass. 517.
14 Mass. 386.
4 Gray, 69.
103 Mass. 50.
108 Mass. 233.
112 Mass. 60.

SECT. 15. Upon the trial of the cause, the issue to the jury shall be, whether the defendant is guilty or not guilty; and if the jury find him guilty, or if he is defaulted, he shall be adjudged by the court to be the father of such child, and shall stand charged with the maintenance thereof, with the assistance of the mother, in such manner as the court shall order; and shall give bond, with sufficient sureties, to perform said order, and also to indemnify and save harmless against all charges of maintenance her parents and any city or town or the state chargeable with the maintenance of such child; and he may be committed to prison until he gives such bond; but if on the trial he is found not guilty, the court shall order that he be discharged; and the verdict in either case shall be final.

Mother of child may testify, etc.
G. S. 72, § 8.
5 Pick. 63.
8 Pick. 560.
3 Cush. 537.
10 Cush. 285, 492.
9 Gray, 399.
11 Gray, 376.
2 Allen, 406.
4 Allen, 438.
7 Allen, 136.
103 Mass. 46, 192.
116 Mass. 198.
123 Mass. 365.

SECT. 16. The mother of the child shall be admitted as a witness in support of the complaint, and may be compelled to testify; but her admissions shall not be used against her in any criminal prosecution, except for perjury committed while so testifying. If, upon examination under section one, she accuses any man of being the father of such bastard child, and, being put upon the discovery of the truth respecting such accusation in the time of her travail, she accuses the same man of being the father of the child of which she is about to be delivered, and has continued constant in such accusation, the fact of such accusation in time of travail may be put in evidence upon the trial to corroborate her testimony.

Complaint not to be withdrawn without consent, etc.
G. S. 72, § 9.
3 Allen, 149.
4 Allen, 59.
9 Allen, 459.
121 Mass. 533.

SECT. 17. No complaint shall be withdrawn, dismissed or settled, by agreement of the mother and the putative father, without the consent of the overseers of the poor of the city or town in which she has her settlement or residence, or of one of the other officers named in section two, or of her parent or guardian, unless provision is made, to the satisfaction of the court, to relieve and

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indemnify any parent, guardian, city, town or the state from all charges that have accrued or may accrue for the maintenance of the child, and for the costs of complaint and prosecution thereof.

Liability for support. G. S. 72, § 10.

SECT. 18. No settlement made by the mother and father, before or after complaint is made, shall relieve the father from liability to any city or town, or the state, for the support of a bastard child.

How case may be compromised. 1862, 213. 4 Allen, 59.

SECT. 19. Public officers named in section two may, with the consent of the mother or of her parent or guardian, compromise such complaint on receipt of a fixed sum, or security for the payment thereof, for the benefit of the city, town or state, as the case may be, instead of prosecuting the same to final judgment.

Person charged as father may take poor debtor's oath. G. S. 72, § 11. 3 Allen, 151. 103 Mass. 57.

SECT. 20. Whoever has been imprisoned ninety days for having failed to comply with an order of the court, as provided in this chapter, shall have the benefit of the laws for the relief of poor prisoners committed on execution: *provided*, that he procures like notification of his intention to take the oath prescribed to poor debtors to be served upon the clerk of the city or town where the child of which he is the reputed father has its legal settlement, if there is such place in this state, and also upon the complainant, if living, thirty days at least before the time appointed for taking the oath.

Mother of child, etc., may have remedy by action. G. S. 72, § 12.

SECT. 21. The mother of such child and said city or town, or the state respectively, may at all times after the liberation of such prisoner, or taking said oath, recover by action of contract any sum of money which ought to have been paid to them respectively by him in pursuance of such order of court.

Prosecutions to be conducted as in civil cases, except, etc. G. S. 72, § 13. 1863, 127, § 5. 5 Allen, 301. 105 Mass. 234. 108 Mass. 233.

SECT. 22. Prosecutions under this chapter, except as herein otherwise expressly provided, shall be according to the course of proceedings in civil cases, and shall not be entertained at a term of the superior court held exclusively for the transaction of criminal business; but may be tried before police, district or municipal courts when sitting for civil or criminal business.

Complainant not required to support defendant in prison. G. S. 72, § 14.

SECT. 23. Nothing herein contained shall be so construed as to require the complainant to pay or give security for the support of the defendant when he is committed to prison by virtue of the provisions of this chapter; nor shall such defendant be discharged from imprisonment by reason of payment or security not being made or given for his support.

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A DIGEST OF DECISIONS ON BASTARDY.

No statute of limitations in this Commonwealth applies to complaints for the maintenance of bastard children.

Wheelwright *v.* Greer, 10 Allen, 389 (1865).

If a woman has made a complaint for the maintenance of her bastard child, and afterwards refuses or neglects to prosecute it, those statutes (Gen. Stats., chap. 72, sect. 2, and Stat. 1859, chap. 239, sect. 3) do not authorize the officers therein named to make a new complaint, but to prosecute the existing one.

Ib.

If a bastard child is born in this Commonwealth, and both its parents reside here at the time of its birth, a complaint against the father under the Bastardy Act may be maintained, although the child was begotten in Canada and both parents then resided there.

McFadden *v.* Frye, 13 Allen, 472 (1866).

A complaint for the support of a bastard child during its life may be commenced and maintained after its death.

Meredith *v.* Wall, 14 Allen, 155 (1867).

In a prosecution under the Bastardy Act the jury may properly take into consideration the resemblance between the child and its putative father, if they find such resemblance to exist on inspection of the child and the putative father.

Finnegan *v.* Dugan, 14 Allen, 197 (1867).

Whether a child was a "full-time child" may be testified to by any physician of ordinary experience who attended at its birth.

Young *v.* Makepeace, 103 Mass., 50 (1869).

In a bastardy process the fact that the defendant was the father of the child may be established by a fair preponderance of evidence.

Ib.

In a bastardy process testimony as to the dissimilarity in personal appearance between the child and J. S. is inadmissible to rebut evidence introduced by the defendant to show that J. S., and not himself, was the father.

Ib.

On the trial of a complaint under the Bastardy Act, Gen. Stats., chap. 72, which the defendant had answered, denying every allegation of the complainant, and charging a conspiracy to defraud, the complainant, in introducing her case, was permitted, against the defendant's objection, to put in evidence "as tending to show the character of the intimacy between herself and the defendant,"

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a letter written by him to her between seven and eight months before the time when she alleged, and had testified, that he begot the child. Held, that he had no ground of exception.

Beers *v.* Jackman, 103 Mass., 192 (1869).

The Superior Court has jurisdiction of a bastardy process, although the proceedings preliminary to the entry of the case therein purport to have been had before a trial justice, and the copy of them is attested by him with that addition to his signature, if no other than a justice of the peace could be a trial justice.

At the trial of a bastardy process, the complainant, on her cross-examination as a witness, denied that she rode or walked with certain men about the time when the child was begotten. Held, that the defendant had no ground of exception to the exclusion of evidence thereupon offered by him to prove that she did ride and walk with them about that time, without proof of any other facts tending to show criminal intercourse.

Maloney *v.* Piper, 105 Mass., 233 (1870).

On the trial of an issue between two towns of the settlement of an infant pauper, it is incompetent for the mother to testify that the infant, though born in wedlock, is illegitimate.

Abington *v.* Duxbury, 105 Mass., 287 (1870).

The fact that the evidence in a bastardy process shows that the child was begotten in a place different from that alleged in the complaint is not fatal to the proceedings.

Kennedy *v.* Shea, 110 Mass., 152 (1872).

A bastardy bond, under Gen. Stats., chap. 72, sect. 4, for the defendant's appearance at the next term of the Superior Court, is valid though signed by but one surety.

Holbrook *v.* Klenert and another, 113 Mass., 268 (1873).

The mother of the child is a competent witness, at the trial of a complaint under the Bastardy Act, to show that in the time of her travail she accused the defendant of being the father of her child.

Reed *v.* Haskins, 116 Mass., 198 (1874).

A supplementary complaint under the Bastardy Act, in the name of the complainant, may be signed by her attorney.

Burt *v.* Ayers, 116 Mass., 263 (1874).

On the trial of a complaint under the Bastardy Act, the evidence was conflicting on the questions whether the complainant had had sexual intercourse with other men than the respondent, about the time the child was begotten, and whether the respondent was at that time, as testified by the complainant, in the place alleged. The judge instructed the jury that if, upon the evidence, they found that the allegations in the complaint, as to time and place, were substantially correct, and were satisfied, upon the whole evidence,

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that the respondent was the father of the child, it was sufficient, though the complainant was mistaken as to the day on which the child was begotten; and refused to give an instruction requested by the respondent, that, if the jury believed that the respondent was not present at the time and place testified to by the complainant, the jury should find the respondent not guilty. Held, that the respondent had no ground of exception.

Duhamell *v.* Ducette, 118 Mass., 569 (1875).

At the trial of a complaint under the Bastardy Act, the respondent offered evidence tending to show that the complainant, during pregnancy, had said that A was the father of the child, and that B had sexual intercourse with the complainant in July, 1873, when the child was begotten. The complainant testified, in direct examination, that she had never had sexual intercourse with any other person than the respondent, and upon cross-examination denied that in July, 1872, she was engaged to be married to A, and remained so engaged until after the child was begotten; that A at the time of the engagement gave her an engagement ring, and that she had ever had sexual intercourse with B. The defendant then offered evidence that in July, 1872, the complainant said that she was going to marry A as soon as he returned from the West, and exibited a ring which she said had been given her by A as an engagement ring; and that, in 1872, the complainant and B, while living together as household servants, appeared friendly and intimate, and that B was repeatedly in her bedroom with her in the night-time. Held, that the question whether this evidence should be admitted or excluded was largely within the discretion of the presiding judge, and that its exclusion afforded the defendant no ground of exception.

Parker *v.* Dudley, 118 Mass., 602 (1875).

If the sureties, on a bond given by the respondent on a complaint under the Bastardy Act for his appearance in the Superior Court, and to abide the order of the court thereon, surrender their principal in the Superior Court, that court has no authority under the Gen. Stats., chap. 72, sects. 4 and 5, to order the respondent to be committed to abide the further order of the court, but only to order him to give a new bond and to stand committed until he complies with that order.

William Hanlan's case, 119 Mass., 59 (1875).

A justice of a district court may receive a complaint under the Bastardy Act, and issue a warrant when the court is not in session.

A complaint under the Bastardy Act was addressed to the justice of a district court, and his certificate to the jurat contained the words "before said court," followed by his signature with his official description. The warrant issued on the complaint was signed by his name and official description. Held, that the complaint sufficiently appeared to be made to the justice and sworn to before him, and that he issued the warrant; and that it was to be presumed that he acted under his authority as justice, and that the court was not in session.

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A supplementary complaint filed in the Superior Court, in a bastardy proceeding, need not be sworn to.

Evidence is not admissible, in a bastardy proceeding, that the complainant had criminal intercourse with men, other than the respondent, more than twelve months before the birth of her child.

At the trial of a complaint under the Bastardy Act, the respondent put in evidence the deposition of a witness, who testified on direct examination to having had intercourse with the complainant a certain time. On re-examination he testified to having seen the complainant having intercourse with other men at a time more than twelve months before the birth of her child. After the signature of the witness was a memorandum of the magistrate who took the deposition, to the effect that, after the counsel for the complainant had left, the witness wished to correct his statement as to the time mentioned in his direct examination; that the counsel for the complainant was recalled and objected, and the magistrate declined to make the correction. The respondent was found guilty, and a bill of exceptions was allowed, which stated that the judge excluded the re-examination. Held, that the memorandum of the magistrate did not form a part of the re-examination, and that the bill of exceptions did not show that the memorandum was excluded.

Sabins *v.* Jones, 119 Mass., 167 (1875).

A person charged under the Bastardy Act with being the father of a bastard child executed a bond, payable to the plaintiff, conditioned that he should appear at the next term of the Superior Court, answer to the complaint, and abide the order of the court thereon. The defendant duly appeared and answered, and was defaulted at the trial.

Held, that there was a breach of the bond.

Tracy *v.* Howe and others, 119 Mass., 228 (1875).

A woman who has made a complaint under the Bastardy Act, Gen. Stats., chap. 72, in which none of the persons mentioned in sect. 2 have intervened, may settle the complaint without the consent of such persons.

In an action against the sureties on a bond, given under the Bastardy Act, it is a good defence that the parties to the complaint in which the bond was given had settled it; that the sureties were informed that the complaint was settled, and that there would be no further proceedings thereon, so that they took no measures to protect themselves; that subsequently the complaint was secretly and fraudulently entered in court without their knowledge; and that this was done in pursuance of a fraudulent conspiracy and agreement between the plaintiff and their principal, a part of which conspiracy was to assure them that they were discharged from liability upon the bond, and to keep them in ignorance of the unlawful act of the plaintiff in continuing to prosecute an action in which she had already acknowledged satisfaction.

Haley *v.* Whalen, 121 Mass., 533 (1877).

A party cannot, under the Statute of 1869, chap. 425, contradict

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his own witness by showing that he has, at other times, made statements inconsistent with his testimony, if his testimony is not material to the issue.

In a bastardy case, evidence that the complainant had at some previous time been seen in bed with a person other than the respondent, but not fixing any time, is immaterial.

Force *v.* Martin, 122 Mass., 5 (1877).

In a bastardy case, in the absence of satisfactory evidence of the existance of a conspiracy, as contended, between the complainant and a third person to extort money from the respondent, the acts and declarations of that person, in the complainant's absence, are inadmissible as evidence against her; and evidence to show improper relations between that person and a female witness also claimed to be in the conspiracy is immaterial.

O'Brine *v.* McNulty, 122 Mass., 474 (1877).

In a bastardy case, where it appears that no accusation was made in time of travail, evidence that the complainant had never accused any man but the respondent of being the father of her child is inadmissible.

Ray *v.* Coffin, 123 Mass., 365 (1877).

At the trial of a complaint under the Bastardy Act, the respondent put in evidence a paper purporting to be a release from the complainant to the respondent of all claims against him by reason of the birth of a child of which she was delivered, in consideration of a sum of money paid by him. Upon cross-examination, she was asked if she had put her mark to a paper. She replied that she had. The paper in question was then read to her, and she was asked if she put her mark to that paper. She replied that she thought not, and that she could neither read nor write. On re-examination, she was asked, "Did the respondent at any time use intimidation, or threaten you? Now tell us what he said." The respondent objected to the competency of this evidence, and the counsel for the complainant stated that he expected to prove that, if the complainant executed the release, she did so under duress or fear of bodily harm from the respondent. The judge permitted the question to be asked for that purpose only. The complainant then testified to certain acts of intimidation by the respondent shortly before the birth of the child; that, if the paper read at the trial was the paper she put her mark to, it was not properly read to her then as it was at the trial; and that she did not know its contents. Held, that the respondent had no ground of exception.

Mulrey *v.* McDonald, 124 Mass., 345 (1878).

A bastardy process is not transferred to the Superior Court by "appeal or removal," within the meaning of the Statute of 1876, chap. 60; and may be tried in that court on certified copies of the papers in the inferior court.

Bigane *v.* Ross, 126 Mass., 233 (1879).

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Evidence that the complainant in a bastardy process had criminal intercourse with a man, other than the respondent, less than seven and one-half months before the birth of her child, is inadmissible in the absence of evidence that the birth was premature.

Ronan *v.* Dugan, 126 Mass., 176 (1879).

In an action against the sureties on a bond given by a person adjudged to be the father of a bastard child, as security for the payment, according to the order of the court, of a certain sum for the maintenance of the child, judgment should be entered for the penal sum named in the bond, without deducting payments made by the principal under that order; but execution should issue for the amount due under the order which the principal has failed to pay.

Barnes *v.* Chase, 128 Mass., 211 (1880).

CHAPTER 86.

OF ALIEN PASSENGERS AND STATE PAUPERS.

ALIEN PASSENGERS.

SECTION

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ALIEN PASSENGERS.

Vessels bringing alien passengers to be under supervision of state board. 1869, 251, §§ 1, 3. 1879, 291, § 3. 1883, 240, § 6.

SECTION 1. Vessels bringing passengers to any port in this commonwealth shall be under the supervision of the state board of health, lunacy and charity, which shall enforce in regard to such vessels and the passengers brought therein all the provisions of law concerning the bringing of strangers and aliens by sea into this commonwealth, and shall institute prosecutions for the violation thereof, and for this purpose may employ counsel when necessary; but when such violation appears to have occurred without intent, it may commute the forfeiture for a sum not less than fifty dollars, the attorney-general advising thereto.

State board to appoint agents to procure information respecting strangers arriving in this state. G. S. 71, § 4. 1866, 272, § 1. 110 Mass. 210, 212.

SECT. 2. The state board shall appoint one or more persons, to be approved by the governor and council, who shall ascertain the names of all persons not having a settlement in this commonwealth brought into it by any conveyance by land, or by any line of communication established for the regular transportation of passengers by water, not extending beyond or stopping at places without the United States, and by whom or whose means such strangers are so brought, and also procure such further information in relation to such strangers as is practicable in order to identify them if they should hereafter become a public charge. All officers and agents of railroad corporations, and proprietors or agents of other means of conveyance, shall furnish the agents of the commonwealth, when so required, with the information above named so far as in their power, by filling up blanks to be furnished them for that purpose. If any of said persons refuse or neglect to furnish such information when requested, they shall be punishable by fine not less than twenty dollars for each person in relation to whom the information is withheld.

to designate places for the examination of vessels, etc. G. S. 71, § 12.

SECT. 3. The state board shall from time to time designate places for the examination of vessels as hereinafter mentioned, and shall require pilots to anchor such vessels at the places so designated, there to remain until such examination is had. Any pilot

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who refuses or neglects to perform said duty, or who through negligence or design permits an alien passenger to land before such examination, shall forfeit not less than fifty nor more than two thousand dollars.

State board to board vessels arriving with alien passengers, etc. G. S. 71, § 14. 1866, 292.

SECT. 4. When a vessel which has sailed from or stopped at any port or place without the limits of the United States arrives at a port or harbor within this state, with alien passengers on board who have never before been within the state, or who were a public charge as lunatics or paupers, the state board shall go on board such vessel and examine into the condition of such passengers; and the master or commanding officer of the vessel shall, within twenty-four hours after such arrival, make a report in writing, under oath, to said state board of the name, age, sex, occupation, place of birth, last place of residence, and condition of every such passenger; and none of them shall be landed or permitted to land, except as is hereinafter provided, until such report is made.

Certain passengers not to be landed until bond is given. Sick and destitute passengers may be landed in certain cases without bond, etc. G. S. 71, § 15. 1872, 169, §§ 1, 3. 11 Pet. 102. 7 How. 283. 4 Mct. 282.

SECT. 5. No insane, idiotic, deaf and dumb, blind, deformed or maimed person, among said passengers, and no alien who has before been a public charge within this state, shall be permitted to land until the master, owner, consignee or agent of such vessel makes and delivers to said state board a bond to the commonwealth for each of said persons, with satisfactory sureties in the sum of one thousand dollars, or in lieu thereof one bond for all of such passengers, with satisfactory sureties, in a sum equal to and not exceeding one thousand dollars for each passenger, conditioned that such passengers shall not within ten years from the date thereof become a city, town or state charge; *provided*, that if any passenger arriving as aforesaid is so sick or destitute as to require relief, and the master refuses to report him, or if said master, owner, consignee or agent refuses to give such bond, the state board may permit such passenger to be landed; and if the commonwealth or any place is put to expense for his support, sickness or burial within ten years of the time when he is so landed, the commonwealth or such place may in an action of contract recover the amount of all such expenses of said master, owner, consignee or agent, who shall also severally forfeit five hundred dollars for every passenger so landed.

State board may commute bonds. G. S. 71, § 8.

SECT. 6. The state board may commute the bonds taken for alien passengers, on such terms as in its judgment will best promote the interest of the state.

Preceding provisions not to extend to consuls, etc., nor persons in distress. G. S. 71, § 19.

SECT. 7. The preceding provisions shall not extend to seamen sent from foreign ports by consuls or vice consuls of the United States, nor to ambassadors, consuls, public ministers, or other persons representing foreign states, nor to persons coming on shore

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from vessels in distress, nor to an alien passenger taken from a wreck where life is in danger.

Penalty for landing aliens except at port of destination. G. S. 71, § 20.

SECT. 8. If the master or commanding officer of a vessel lands an alien passenger at any place within this state other than that to which such vessel is destined, with intent to avoid the requirements of this chapter, he shall forfeit one hundred dollars for every passenger so landed.

or without complying with provisions of this chapter. G. S. 71, § 21.

SECT. 9. If the master or commanding officer of a vessel lands, or permits to be landed, in this state, any alien passenger, without complying with the provisions of this chapter, he and the owner or consignee of the vessel shall severally forfeit five hundred dollars for every passenger so landed.

for landing convicts, etc., from other states. G. S. 71, § 22.

SECT. 10. If the master or other person having charge of a vessel, therein brings to and lands, or suffers to be landed, within this state, a person convicted in any other state or in a foreign country of an infamous crime, or a crime for which he has been sentenced to transportation, knowing of such conviction, or having reason to suspect him, or a person of a notoriously dissolute, infamous and abandoned life and character, knowing him to be such, he shall for every such offence forfeit a sum not exceeding five hundred dollars.

Persons bringing strangers into state, liable for support in certain cases. G. S. 71, § 25. 1866, 272, § 1.

SECT. 11. If a person not having a settlement in this commonwealth, brought into this state in the manner specified in section two, falls sick, or from any cause becomes a public charge within one year thereafter, the commonwealth or any place incurring expenses for his support, sickness or burial may in an action of contract recover the amount of such expenses of the corporation or party by whose means the person was brought into the state: *provided*, that the party so liable shall be notified of his liability in each case as soon as practicable, in order that he may, if so disposed, provide means of support or removal.

Corporations bringing strangers into state to labor, to give bond for their support. 1866, 272, § 2. 110 Mass. 210, 212.

SECT. 12. Every corporation which brings into this commonwealth any person not having a settlement therein, or by whose means or at whose instigation any such person is so brought, for the purpose of performing labor for such corporation, shall give a bond to the commonwealth, to be delivered to the state board, in the sum of three hundred dollars, conditioned that neither such person nor any one legally dependent on him for support, shall within two years become a city, town or state charge.

THE STATE ALMSHOUSE AND STATE PAUPERS.

Trustees of state almshouse to be appointed. 1879, 291, § 9.

SECT. 13. There shall be a board of trustees of the state almshouse at Tewksbury, consisting of five persons, of whom two shall be women. The present members thereof shall continue to hold

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their offices for the terms for which they were appointed. Two members shall retire each year, except every third year, when one shall retire, as the terms expire for which they were appointed. The appointments or re-appointments to fill vacancies occurring from expiration of term of office shall be for three years. All vacancies shall be filled by the governor, with the advice and consent of the council. No person employed by the board shall be a member thereof.

Trustees of state almshouse to establish rules, etc.; to serve without pay. G. S. 71, § 32. 1879, 291, §§ 7, 9.

SECT. 14. The trustees shall, subject to the approval of the governor, establish rules and regulations for the proper management and government of the almshouse, and shall see that such rules and regulations are enforced; and the almshouse shall be visited by one trustee at least once in each week. They shall receive no compensation for their services, but their travelling and other necessary expenses shall be allowed and paid.

Other powers of trustees. G. S. 71, § 33. 1879, 291, § 9.

SECT. 15. The trustees shall have the same power to bind as apprentices, minors who are inmates of the almshouse, and to cause the inmates thereof to be returned to the place or country from which they came, as is vested in overseers of the poor.

Resident physician. 1876, 179, §§ 1, 2. 1879, 291, § 10.

* SECT. 16. The trustees shall annually elect a resident physician, competent to take charge of insane inmates, and, subject to the approval of the governor and council, fix his compensation, and such physician shall have the right to reside with his family at the almshouse. The trustees shall also fill any vacancy which may occur.

Assistant physicians. 1876, 179, § 3. 1879, 291, § 10.

SECT. 17. The resident physician shall immediately upon his election, and thereafter whenever a vacancy occurs, nominate to the trustees suitable persons for the offices of first and second assistant physicians, who shall hold their several offices during the pleasure of said trustees and at such salaries as may be fixed by them with the approval of the governor and council.

Powers and duties of resident physician. 1876, 179, § 4.

SECT. 18. The resident physician shall have entire charge of and be responsible for the medical treatment of the inmates of the hospital at the almshouse; shall appoint and remove the nurses of the hospital, and shall fix their several salaries, subject to the approval of the inspectors; shall regulate and control the dietary of the hospital, and shall supervise the preparation of the food for this department; and shall from time to time make requisitions upon the superintendent for such food, medicines and necessaries (other than the ordinary almshouse supplies) as in his judgment the requirements of a well-ordered hospital demand.

Superintend-

SECT. 19. The trustees shall annually elect a superintendent,

* The sections marked (*) contain provisions affecting the insane, and might also be included under the Lunacy Laws.

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ent; salary, bond, etc. G. S. 71, § 34. 1879, 291, § 10.

and, subject to the approval of the governor and council, fix his compensation, and he shall receive no other compensation or perquisite for his services, except the right to reside with his family in the building under his care. He shall give bond to the treasurer of the commonwealth for the faithful performance of his duties, in such sum as shall be designated by the rules and regulations of the trustees, and with sufficient surety or sureties to the acceptance of said trustees, and subject to the approval of the governor.

Superintendent to appoint other officers. 1879, 291, § 10.

SECT. 20. The superintendent shall appoint the other officers, and fix their compensation, with the approval of the trustees; but the amount paid for such salaries shall not exceed in the aggregate the sum appropriated by the legislature for the purpose.

to receive paupers, etc. G. S. 71, § 35.

SECT. 21. The superintendent shall receive all paupers sent with a proper certificate from the mayor of any city or one of the overseers of the poor of any town, and provide for them under the rules and regulations herein provided.

Towns may send paupers to almshouse, etc. 1872, 45, § 2. 1879, 291, § 3.

SECT. 22. The several cities and towns may, at their own expense, send to the almshouse, to be maintained at the public charge, all paupers who may fall into distress therein, not having a settlement within the commonwealth; but when the distance between such city or town and the almshouse, by the usual route, exceeds thirty miles, the city or town shall be reimbursed by the commonwealth, upon bills approved by the state board, for the expense of transportation in excess of thirty miles, at a rate not exceeding three cents a mile, by the usual route, for each state pauper thus sent.

Provisions for support of poor Indians, etc. 1869, 463, § 4.

SECT. 23. The state board, upon the application of the overseers of the poor of any town, shall make provision in the almshouse or elsewhere for the support of Indians who may be unable to support themselves, and who have not acquired a settlement in any town; and upon the application of an Indian who received aid from the commonwealth prior to the twenty-third day of July in the year eighteen hundred and sixty-nine, the state board shall furnish to him in the almshouse or elsewhere such aid as it may deem expedient.

Towns not to send dangerous lunatics. G. S. 71, § 37.

* SECT. 24. No city or town shall send to the almshouse any person who by reason of insanity would be dangerous if at large.

Small-pox patients not to be sent to almshouse. How taken care of. 1865, 162, § 1. 1879, 291, § 3.

† SECT. 25. No city or town officer shall be allowed to send to the almshouse any person infected with small-pox or other disease dangerous to the public health, or any other sick person whose health would be endangered by removal; but all such persons liable to be maintained by the commonwealth shall be supported

† The sections marked (†) contain provisions affecting the public health, and might also be included in the Health Laws.

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during their sickness by the city or town in which they are taken sick, and notice of such sickness shall be given to the state board, which may examine the case, and order the removal of the patient if it deems it expedient.

Expenses, how paid. 1865, 162, § 2. 1869, 12, Res. 39. 1879, 291, § 3.

SECT. 26. The expense incurred by a city or town under the provisions of the preceding section, after notice has been given as therein required, shall be reimbursed by the commonwealth, the bills for said support having been approved by the state board or some person designated by it, who shall make suitable investigation.

Penalty. 1865, 162, 3.

SECT. 27. Any mayor or overseer of the poor who knowingly offends against the provisions of section twenty-five shall be punished by fine of not less than fifty nor more more than one hundred dollars.

Idiots having no settlement may be sent to almshouse. G. S. 71, § 38.

SECT. 28. When it is made to appear on application in writing to a police, district or municipal court, or to a trial justice, that a person having no settlement in this state is idiotic and ought to be confined, such court or trial justice shall send such person to the state almshouse, there to be supported, governed and employed in the same manner as persons sent thereto by overseers of the poor.

Fees allowed to officers, etc., in such cases. G. S. 71, § 39.

SECT. 29. In any case arising under the preceding section, all magistrates, officers and witnesses shall receive the same fees and compensation for services performed, and for travel and attendance, as are allowed by law for like services in criminal proceedings, to be taxed, allowed and paid in the same manner.

Husband and wife not to be separated. G. S. 71, § 43. 1866, 234, § 1. 110 Mass. 98.

SECT. 30. When the operation of any provisions of law in relation to poor and indigent persons might cause a separation of husband and wife by reason of her having a legal settlement in some place in the commonwealth, he being a state pauper, both parties shall be supported by the place where she has a legal settlement.

Expense of supporting state pauper in such case, how paid. G. S. 71, § 44. 1866, 234, § 2.

SECT. 31. The expense of thus supporting the person who is such state pauper shall be paid by the commonwealth, reference being had to the expense of supporting such person at the almshouse, if thereto committed.

Towns to take charge of state pauper in such case, at expense of state. G. S. 71, § 46. 105 Mass. 337.

SECT. 32. When by reason of the almshouse being full a city or town is unable to obtain admission for a state pauper, such place shall take charge of the pauper until notified by the superintendent that the pauper can be received. The superintendent shall give notice by mail when the pauper can be received, having regard in so doing to the priority of applications; and until notice is given, the city or town shall receive payment for the support of the pauper from the treasury of the commonwealth.

Powers of

SECT. 33. The trustees of the almshouse shall have the same

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trustees as to inmates and property. G. S. 71, § 47. 1879, 291, § 9.

powers in relation to pauper inmates and their property as are vested in towns and in the overseers of the poor in reference to paupers supported or relieved by towns, to be exercised in the same manner.

Superintendent may contract for employment of inmates, etc. G. S. 71, § 48. 1879, 291, § 9.

SECT. 34. The superintendent of the almshouse, with the consent of the trustees, may contract with any person for the employment of any inmate thereof in any kind of lawful labor, for such wages or on such terms as the superintendent and trustees approve. When a contract is so made, such inmate shall be discharged from the institution, and if he refuses to avail himself of the employment offered shall forfeit all claim to support as a state pauper.

Towns liable for support of paupers in almshouses, etc. G. S. 71, § 49. 1875, 94, § 1. 8 Gray, 455. 102 Mass. 216. 105 Mass. 337.

SECT. 35. If a pauper having a legal settlement in any place becomes an inmate of the almshouse, such place shall be liable to the commonwealth for the expense incurred for him, in like manner as one town is liable to another in like cases; and the trustees and the state board shall adopt the same measures in regard to notifying towns so liable, the removal of the pauper, and the recovery from towns of expenses incurred for him, as are prescribed for towns in like cases.

Liability of kindred for support of such paupers. G. S. 71, § 50. 1875, 94, § 1.

SECT. 36. The kindred who are liable by law to towns for expenses in supporting such paupers shall in like manner be liable to the commonwealth for any expense incurred for such paupers; and the trustees and the state board may adopt the same measures and institute like legal proceedings for the recovery of such expenses of the kindred so liable as are prescribed for towns in like cases.

Punishment for leaving almshouse without consent, if found begging. G. S. 71, § 51.

SECT. 37. If an inmate of the almshouse, above the age of sixteen years, leaves the same without the consent of the trustees thereof, and within one year thereafter is found within any city or town soliciting public or private charity, he shall be punished by confinement to hard labor in the house of correction for the county within which he is so found for a term not exceeding three months.

Foreign paupers may be conveyed to place where they belong. G. S. 71, § 52.

SECT. 38. Any justice of the superior court, or of a police, district or municipal court, or trial justice, upon complaint of the overseers of the poor of any place or of the state board, in term time or vacation, may, by warrant directed to a constable or other person therein designated, cause any pauper not born nor having a settlement in this state who may conveniently be removed, to be conveyed, at the expense of the state, to any other state, or, if not a citizen of the United States, to any place beyond sea where he belongs.

State lunatic paupers may be conveyed to

SECT. 39. Upon complaint of the trustees of a state lunatic hospital, the county commissioners of a county, the trustees of a state

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pauper establishment, or the overseers of the poor of a place, a judge of the probate court shall have the same powers as are given by the preceding section to cause the removal of state lunatic paupers under their charge to any other state, or beyond sea, where they belong.

place where they belong. G. S. 71, § 53.

SECT. 40. The trustees of the almshouse shall audit the accounts of the superintendent; and shall report to the governor and council, on or before the fifteenth day of October annually, the state of the institution and the expenses thereof in detail for the year ending on the last day of the preceding month, with a list of the salaried officers and their salaries, and, in a tabular form under the heads specified in section seven of chapter seventy-nine, the value of the stock and supplies.

Trustees to audit superintendent's accounts, and make reports. G. S. 71, § 54.

SECT. 41. All accounts for the maintenance of the almshouse and the support of its inmates shall, after they have been approved by the trustees, be presented to the state auditor at the close of each month and paid from the treasury of the commonwealth.

Accounts for maintenance of almshouse, how and when paid. G. S. 71, § 55. 1874, 360, § 2.

SECT. 42. Nothing shall be allowed from the treasury of the commonwealth to any county, city or town for expenses incurred on account of any state pauper, except in cases expressly provided by law.

No allowance to county, etc., for state paupers, except, etc. G. S. 71, § 56.

SECT. 43. All accounts against the commonwealth for allowance to counties, cities and towns, on account of state paupers, shall be rendered to the state board on or before the third Wednesday of January annually; and shall be so made as to include all claims for such charges up to the first day of said January, and, if approved by the board and certified by the auditor of accounts, shall be paid from the treasury of the commonwealth. The state board may require such accounts to be accompanied with such statement of particulars and facts, and substantiated by such affidavits, as may seem to it proper.

Accounts of counties, etc., how audited. G. S. 71, § 57.

CHILDREN.

SECT. 44. Whenever an infant having no known settlement in this commonwealth is received by the Massachusetts Infant Asylum, agreeably to the provisions of its charter, immediate notice of such reception shall be given by the directors of said asylum, in writing, to the state board, which shall have authority to examine the case and remove such infant, if it considers such removal expedient. The expense incurred by the asylum for the support of such infant, after the bills for the same have been approved by the state board, shall be reimbursed by the commonwealth to an amount not exceeding four dollars per week for each infant; but the commonwealth shall be under no obligation to reimburse the

State board to be notified of reception of infants by Massachusetts Infant Asylum. 1870, 136, § 1

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asylum for any expense incurred for the support of any such infant for a period of more than one week prior to the giving of the notice herein provided for.

Authority of board in such cases. 1870, 136, § 2.

SECT. 45. The state board shall have the same authority in respect to any such infant that it has in respect to infants in the almshouse.

When asylum is full, state board to provide for infants who are state paupers. 1880, 142, § 1.

SECT. 46. Whenever the asylum is full of inmates, or when from sickness or other sufficient cause it is not expedient to receive or retain an infant legally committed thereto, who is a state pauper, the state board shall provide for such infant in a proper family or other suitable place, under the constant supervision of its medical officers, till it reaches the age of two years, or is otherwise provided for by the state board.

Expenses in such cases, how paid. 1880, 142, § 2.

SECT. 47. The cost of maintaining such infant shall be paid from the appropriation for the support of infants having no known settlement in the commonwealth, or from the ordinary appropriations for the support of the out-door poor.

CHAPTER 88.

OF THE STATE WORKHOUSE.

SECTION

1. Trustees to be appointed.
2. Superintendent, salary, bond, etc.
3. Trustees to visit workhouse; report, etc.
4. State board of health, etc., to have certain duties in relation to.
5. Vagabonds, etc., may be committed to.
6. State board of health, etc., may apprentice, remove from state, or discharge such persons.
7. Support to be paid for by place of settlement, unless removed thereto, etc.
8. Punishment for attempting to escape.

Trustees to be appointed. 1879, 291, § 9.

SECTION 1. There shall be a board of five trustees of the state workhouse at Bridgewater, similar to and constituted and appointed in the same manner and for the same term as the board of trustees of the state almshouse. The board shall make all rules and regulations for the government of the workhouse.

Superintendent, salary, bond, etc. G. S. 71, § 34. 1866, 198, §§ 2, 4. 1872, 45, § 4. 1879, 291, § 10.

SECT. 2. The board of trustees shall annually elect a superintendent and physician, and, subject to the approval of the governor and council, fix their compensation. The superintendent shall have the management and control of the workhouse and its operations, and may make contracts for the labor of its inmates, and shall pay the receipts for labor quarterly into the state treasury. His bond, his right of residence, and his powers and duties in other respects, shall be like those provided for the superintendent of the state almshouse.

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SECT. 3. The trustees shall visit the workhouse once each month, and one of them shall visit it each week; and the board shall annually, before the fifteenth day of October, report the condition of the workhouse to the governor and council, and shall audit and approve all bills before payment of the same.

Trustees to visit workhouse; report, etc.
1866, 198, § 2.
1879, 291, § 9.

SECT. 4. The state board of health, lunacy and charity shall have a general supervision of the workhouse, and shall have the same power of discharging persons confined therein for any cause that the county commissioners have in houses of correction; there shall also be vested in the state board all the powers, not herein given to the superintendent and trustees, which overseers of the poor have in relation to town workhouses.

State board of health, etc., to have certain duties in relation to.
1866, 198, § 3.
1877, 147.
1879, 291, § 3.

SECT. 5. Upon complaint of one of the overseers of the poor of a city or town, or in Boston of the directors of public institutions, police, district and municipal courts and trial justices may in their discretion commit persons convicted before them of any of the offences enumerated in sections twenty-nine and thirty-seven of chapter two hundred and seven to the workhouse, for a term not less than three months nor more than two years.

Vagabonds, etc., may be committed to.
1869, 258, § 1.
1870, 19.

SECT. 6. The state board shall have the same power to apprentice or discharge any person so committed as is vested in county commissioners over inmates of houses of correction; and it may cause any such person, not having a legal settlement in this commonwealth, to be removed to the state or place where he belongs, or whence he came, in accordance with law. If any person so removed returns to this state before the expiration of his term of sentence, he may be re-arrested and returned to the workhouse, there to serve out the remainder of his term.

State board of health, etc., may apprentice, remove from state, or discharge such persons.
1869, 258, § 2.
1877, 147.

SECT. 7. If any person so committed has a legal settlement in a city or town in this commonwealth, such city or town shall pay for his support such sum per week as may be fixed upon by the state board, reference being had to his capacity for labor; but upon written request of the overseers of the poor the state board shall permit him to be transferred to the workhouse of his place of settlement, there to serve out the remainder of his sentence.

Support to be paid for by place of settlement, unless removed thereto, etc.
1869, 258, § 3.

SECT. 8. A person sentenced to the state workhouse who escapes or attempts to escape therefrom, or from the custody of the officer while being conveyed to said workhouse, may be pursued and reclaimed; and shall be punished by confinement for not more than six months in addition to his previous sentence.

Punishment for attempting to escape.
1880, 257, § 8.

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CHAPTER 89.

OF THE STATE PRIMARY AND REFORM SCHOOLS, AND THE VISITATION AND REFORMATION OF JUVENILE OFFENDERS.

TRUSTEES, SUPERINTENDENTS, AND OTHER OFFICERS.

SECTION
1. Trustees of state primary and reform schools.
2. Superintendents, physicians, and other officers.

STATE PRIMARY SCHOOL.

3. Superintendent's powers, duties and bond.
4. What children to be received.
5. Children above sixteen not to be received, except, etc.
6. Trustees may place children in charge of suitable persons, etc.
7. May transfer inmates from industrial and reform schools to primary school.

INDUSTRIAL AND REFORM SCHOOLS AND JUVENILE OFFENDERS.

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9. Instruction, etc., of boys and girls.
10. Examination of schools; records; reports.
11. Duties of superintendents.
12. bond, accounts, etc.
13. Superintendent of industrial school to buy books, etc.
14. Superintendents to make all contracts in writing. Suits on.
15. Commitments of boys and girls, by whom made.
16. Judges of probate courts may act in any county.
17. Commissioners to be appointed to hear, etc., complaints against girls.
18. Judges, etc., may issue warrants to bring before them girls and boys who are complained of.
19. Police, etc., courts to try juvenile offenders, separate from other criminal cases.
20. Proceedings when girls or boys are brought before judge, etc.
21. Child so arrested may be held, committed to jail, or bailed, till time of trial.
22. Judges, etc., may authorize state board to indenture child upon request, etc.
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24. Judge, etc., to certify residence and age of boy.
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37. Laws relating to reform school to apply to boys convicted in United States courts.
38. Trustees may bind out girls and boys.
39. Indentures of girls to contain certain provisions.
40. Indentures of girls and boys to contain certain provisions.
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42. Indenture of apprenticeship of girls not to be assigned, except, etc. May be cancelled.
43. Discharge of girl when master is guilty of cruelty, etc.
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45. Trustees may discharge girls.
46. to act as guardians of girls discharged under twenty-one, or bound out.
47. Transfer of girls to reformatory prison: return.
48. Trustees may expend money given for houses, etc., for industrial school. Number not to exceed six.
49. Notice to be given to overseers, etc.
50. State board may discharge child from custody.
51. Notice to be given to towns, when.
52. Records of commitments, etc., to be returned to superior court.
53. State board annually to visit all children indentured by state, etc.
54. may cancel indentures, or transfer child, when.
55. to be notified before child is indentured, etc.
56. to seek out suitable persons to adopt children, etc.
57. Trustees may aid destitute girls.

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TRUSTEES, SUPERINTENDENTS, AND OTHER OFFICERS.

Trustees of state primary and reform schools. 1879, 291, § 8.

SECTION 1. The government of the State Primary School at Monson, the State Industrial School for Girls at Lancaster, and the State Reform School for Boys at Westborough, shall be vested in a board of seven trustees, two of whom shall be women, and who shall be known as the trustees of the state primary and reform schools. The trustees shall be appointed and commissioned by the governor, with the advice and consent of the council. Those now in office shall continue to hold their offices during the terms for which they were appointed. Two members shall retire each year for two years successively, and one member a year for three years successively, as the terms expire for which they were appointed; and the appointments or re-appointments to fill vacancies occurring from expiration of term of office shall be for five years. Other vacancies may be filled as they occur, and the names of the persons appointed shall be substituted in the list for the remainder of the vacant terms. No person employed by the board and receiving compensation shall be a member thereof. The board of trustees shall be a corporation, for the purpose of taking, holding and investing, in trust for the commonwealth, any grant or devise of lands, and any gift or bequest of money or other personal property, made for the use of any institution of which they are trustees; and they shall succeed to the trusts and powers formerly held or acquired by the boards of trustees and the treasurers of the state reform and the state industrial schools.

Superintendents, physicians, and other officers. 1879, 291, § 10.

SECT. 2. The trustees shall annually elect a superintendent and a physician of each of said schools, and, subject to the approval of the governor and council, fix their compensation. The superintendent of each school shall appoint the other officers, and fix their compensation, with the approval of the trustees; but the amount paid for such salaries shall not exceed in the aggregate the sum appropriated by the legislature for the purpose.

STATE PRIMARY SCHOOL.

Superintendent's powers, duties and bond. G. S. 71, § 34. 1866, 209, § 2. 1872, 45, § 4.

SECT. 3. The superintendent, under the direction of the trustees, shall have charge of the primary school, and prepare rules and regulations for its government and the general management of its affairs; and such rules and regulations, when approved by the governor and council, and placed on record in the office of the secretary of the commonwealth, shall be and remain in force until altered or amended with the approval of the governor and council. He shall give bond in such sum as shall be designated by the rules and regulations of the trustees, and with sufficient surety or sure-

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ties to the acceptance of said trustees, and subject to the approval of the governor.

What children to be received. 1866, 209, § 1.

SECT. 4. Dependent and neglected children, having no settlement within the commonwealth, shall be received as pupils in the primary school, and shall be maintained, taught, exercised and employed as their health and condition shall require; but they shall not be designated as paupers.

Children above sixteen not to be received, except, etc. 1866, 209, § 7. 1879, 291, § 3.

SECT. 5. No child above the age of sixteen years shall be received or retained in the primary school, except by special vote of the state board of health, lunacy and charity, on the representation of the superintendent that there are urgent reasons for such admission or retention; but the superintendent, trustees and other officers shall use all diligence to provide suitable places in good families for all such pupils as have received an elementary education; and any other pupils may be placed in good families, on condition that their education shall be provided for in the public schools of the town or city where they may reside.

Trustees may place children in charge of suitable persons, etc. 1880, 208, § 1.

SECT. 6. The trustees may place in charge of suitable persons any of the children of the primary school, the power of visitation and final discharge remaining with the state board; and may provide for the maintenance of any child so placed, in whole or in part, at a cost to the state not exceeding two dollars a week. The expense of such maintenance shall be paid from the annual appropriation for the current expense of the school.

May transfer inmates from industrial and reform schools to primary school. 1880, 208, § 2. 1872, 68, § 6.

SECT. 7. The trustees may also transfer inmates from the industrial school and reform school to the primary school. When such transfers are made, the mittimus upon which the person was committed shall accompany the person transferred; and such person shall be held upon the mittimus until the term of sentence has expired, unless sooner discharged or remanded. On application of any three of the trustees, the state board of health, lunacy and charity may return any boy so transferred, with the mittimus, to the reform school, there to be held as if no such transfer had been made.

STATE INDUSTRIAL AND REFORM SCHOOLS AND JUVENILE OFFENDERS.

Powers and duties of trustees. G. S. 75, § 2. G. S. 76, §§ 3, 4. 1879, 291, § 8.

SECT. 8. The trustees shall have the control of the buildings of the industrial and reform schools, and take charge of the general interests of each institution; see that its affairs are conducted according to law, and such by-laws as the trustees may from time to time adopt, and that strict discipline is maintained therein; provide employment for the inmates and bind them out, discharge, or remand them, as hereinafter provided; exercise a vigilant supervision over the institution, its officers and inmates,

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and prescribe the duties of the officers. The by-laws may be amended by the assent of five trustees at a legal meeting; but no alteration shall be valid until approved by the governor and council.

Instruction, etc., of boys and girls. G. S. 75, § 20. G. S. 76, § 5.

SECT. 9. The trustees shall cause the girls and boys under their charge to be instructed in piety and morality, and in such branches of useful knowledge as are adapted to their age and capacity, and in some regular course of labor, either mechanical, manufacturing, agricultural or horticultural, for the boys; or mechanical, manufacturing or horticultural, and especially in domestic and household labor and duties, for the girls; or a combination of these, as may be best suited to their age, strength, disposition and capacity; and in such other arts, trades and employments as may seem to the trustees best adapted to secure their reformation, amendment and future benefit.

Examination of schools, records, reports. G. S. 75, § 25. G. S. 76, § 7. 1880, 208, § 4.

SECT. 10. One or more of the trustees shall visit each school at least once in every two weeks, at which time the girls and boys shall be examined in the school-rooms and workshops, and the registers shall be inspected. A record shall be kept of these visits in the books of the superintendents. Once in every three months, each school in all its departments shall be thoroughly examined by a majority of the trustees, and a report thereof made to the board. On or before the fifteenth day of October in each year, an abstract of these quarterly reports shall be prepared, which, together with a full report by the superintendents, and a list of the salaried officers and their salaries, and, in a tabular form, under the heads specified in section seven of chapter seventy-nine, the value of the stock and supplies of each school shall be laid before the governor and council for the information of the legislature.

Superintendents, duties of. G. S. 75, § 21. G. S. 76, § 8.

SECT. 11. The superintendent of each school, respectively, with the subordinate officers, shall have the general charge and custody of the girls and boys. He shall be a constant resident at the school, and under the direction of the trustees shall discipline, govern, instruct and employ, and use his best endeavors to reform, the inmates in such manner as shall, while preserving their health and promoting the proper development of their physical system, secure the formation as far as possible of moral, religious and industrious habits, and regular and thorough progress and improvement in their studies, trades and employments.

bond, accounts, etc. G. S. 75, § 22. G. S. 76, § 9.

SECT. 12. Each superintendent shall, before entering upon his duties, give a bond to the commonwealth, with sureties satisfactory to the governor and council, in the sum of two thousand dollars, conditioned that he shall faithfully perform all his duties and account for all money received by him as superintendent; which bond

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shall be filed in the office of the treasurer of the commonwealth. He shall have charge of all the property of the institution within the precincts thereof. He shall keep in suitable books complete accounts of all his receipts and expenditures, and of all property intrusted to him, showing the income and expenses of the institution; and shall account to the trustees in such manner as they may require for all money received by him. His books and all documents relating to the school shall at all times be open to the inspection of the trustees, who shall at least once in every six months carefully examine the books and accounts, and the vouchers and documents connected therewith, and make a record of the result of such examination. He shall keep a register, containing the name, age, and circumstances connected with the early history of each girl or boy, and shall add such facts as come to his knowledge relating to her or his history while at the institution, and after leaving it.

Superintendent of industrial school to buy books, etc. G. S. 75, § 22.

SECT. 13. The superintendent of the industrial school shall, under the direction of the trustees, make purchases of books with the income and profits, and according to the terms, of the donation of Henry B. Rogers.

Superintendents to make all contracts in writing. Suits on. G. S. 75, § 23. G. S. 76, § 10.

SECT. 14. Each superintendent shall make in writing all contracts on account of the institution, with the approval of the trustees if their by-laws require it; and he or his successor may sue or be sued thereon to final judgment and execution. No suit shall abate by reason of the office of superintendent becoming vacant, but any successor in office may take upon himself the prosecution or defence thereof; and upon motion of the adverse party and notice, he shall be required to do so.

Commitments of boys and girls, by whom made. 1877, 210, § 5, 211, § 6, 1874, 258. 1870, 359, § 7. 1861, 200. 1871, 365.

SECT. 15. Boys may be committed to the reform school from the county of Suffolk by municipal and police courts and trial justices, and from other counties by judges of probate courts and by police and district courts and trial justices; and girls may in like manner be committed to the industrial school by the above mentioned courts and justices, and in other counties than Suffolk, by commissioners; all as hereinafter provided in this chapter.

Judges of probate courts may act in any county. 1870, 359, § 13.

SECT. 16. Judges of the probate courts, except in Suffolk county, may receive complaints, issue warrants, and hear cases against juvenile offenders at such times or places, in or out of their respective counties, as convenience may require. And any judge of a probate court may act in any case or the judge of any other county, whether absent or not, when so requested.

Commissioners to be appointed to hear, etc., complaints against girls.

SECT. 17. Upon request of the mayor and aldermen, selectmen or overseers of the poor of any city or town, except in Suffolk county, the governor, with the advice and consent of the council,

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shall appoint and commission, in the same manner as justices of the peace are appointed and commissioned, one or more suitable persons residing in such city or town, who may therein hear and determine complaints against girls and make commitments to the industrial school, under this chapter. G. S. 75, § 5.

Judges, etc., may issue warrants to bring before them girls and boys who are complained of. 1861, 200. 1870, 359, § 7. 1871, 365. 1872, 68, § 5. 1872, 358, § 4. 122 Mass. 330. 127 Mass. 450.

SECT. 18. Upon complaint so made to any such court or magistrate against any boy or girl between the ages of seven and seventeen years, for any offence not punishable by death or imprisonment for life, such court or magistrate shall examine on oath the complainant and the witnesses produced by him; shall reduce the complaint to writing and cause it to be subscribed by the complainant; and may issue a warrant reciting the substance of the accusation and requiring the officer to whom it is directed forthwith to take the person accused and bring him or her before said court or magistrate, to be dealt with according to law; and to summon such witnesses as shall be named therein to appear and give evidence on the examination.

District, etc., courts to try juvenile offenders, separate from other criminal cases. 1877, 210, § 5.

SECT. 19. Police, district and municipal courts shall try juvenile offenders separate and apart from the trial of other criminal cases, at suitable times to be designated therefor by said courts, to be called the session for juvenile offenders, of which session a separate docket and record shall be kept.

Proceedings when girls or boys are brought before judge, etc. G. S. 75, § 6. G. S. 76, § 17. 1870, 359, § 8. 5 Allen, 509.

SECT. 20. When any such boy or girl is so brought on such complaint before such court or magistrate, a summons shall be issued to the father of the boy or girl, if living and resident within the place where the boy or girl was found, and if not, then to the mother if she is living and so resident; and if there is no such father or mother, then to the lawful guardian, if there is one so resident; if not, then to the person with whom, according to the statement of such boy or girl, and such testimony as shall be received, he or she resides; and if there is no such person, the court or magistrate may appoint some suitable person to act in behalf of such boy or girl, requiring him or her to appear at a time and place stated in the summons and show cause, if any there is, why such boy or girl should not be committed to the reform school or industrial school respectively; and shall cause written notice of the pendency of such complaint to be given by mail or otherwise to the state board, which shall have an opportunity to investigate the case, attend the trial, and protect the interests of or otherwise provide for the child; and shall also, in the case of a complaint against a boy, cause notice to be given to the mayor of the city, or to one of the selectmen of the town, where the boy resides.

Child so arrested may be held, committed to jail, or bailed

SECT. 21. Such boy or girl arrested on any complaint referred to in the preceding sections may be held or committed to jail by the officer having said child in custody until the time appointed for the

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till time of trial. 1870, 359, § 9.

trial, unless admitted to bail as provided in section forty-six of chapter two hundred and twelve; and the judge of the probate court, as well as the magistrates named in said section, may admit to bail.

Judges, etc., may authorize state board to indenture child upon request, etc. 1870, 359, § 10. 1871, 365.

SECT. 22. The court or magistrate before whom such boy or girl is brought on any complaint aforesaid, upon request of the state board may authorize said board to take and indenture, or place in charge of any person, or in the state primary school, or if he or she prove unmanageable, to commit to the reform or industrial school, such boy or girl, till he or she attains the age of twenty-one years, or for any less time. And said board may provide for the maintenance of any such boy or girl so indentured or placed in charge of a person, in whole or in part, at a cost to the state not exceeding the average cost of the support of children at the state primary school.

Examination, trial, commitment. G. S. 75, § 7. G. S. 76, §§ 18, 19. 1862, 9.

SECT. 23. At the time mentioned in the summons, such court or magistrate shall proceed to examine the boy or girl, and any party appearing in answer to the summons, and to take such testimony in relation to the case as may be produced. If the allegations are proved, and it appears that the boy or girl is a suitable subject for the reform or industrial school, and that his or her moral welfare and the good of society require that he or she should be sent thereto for instruction, employment or reformation, a warrant of commitment shall be issued in substance as follows: —

To any officer qualified to serve civil or criminal process in the county of

You are hereby commanded to take charge of C D, a boy [or girl] between the ages of seven and seventeen years, who has been proved to me to be a suitable subject for the state reform school [or state industrial school for girls], and a proper object for its care, discipline, and instruction, and deliver said boy [or girl], without delay, to the superintendent of said school, or other person in charge thereof, at the place where the same is established. And for so doing this shall be your sufficient warrant.

Dated this day of , 18 , et , in the county of , in the commonwealth of Massachusetts.

But no variance from said form shall be deemed material if it sufficiently appears upon the face thereof that the boy or girl is committed by the court or magistrate in the exercise of the powers conferred by this chapter. The warrant may be executed by any officer qualified to serve civil or criminal process in the county where the case is heard. Accompanying the warrant, the court or magistrate shall transmit to the superintendent, by the officer serving it, a statement of the substance of the complaint and testimony given in the case.

Judge, etc., to

SECT. 24. The court or magistrate shall certify in the warrant

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for the commitment of a boy the place in which the boy resided at the time of his arrest, and such certificate for the purposes of this chapter shall be conclusive evidence of his residence; and shall also state therein the age of the boy, as near as can be ascertained; and shall transmit to the superintendent, as provided in the preceding section, a statement of such other particulars concerning the boy as can be ascertained.

certify residence, and age of boy. G. S. 76, § 19.

SECT. 25. When a girl is brought before such court or magistrate upon complaint that she is leading an idle, vagrant or vicious life, or has been found in any street, highway or public place in circumstances of want and suffering, or of neglect, exposure, abandonment or beggary, the like proceedings shall be had as are provided in sections twenty to twenty-three inclusive, and she may be committed to the industrial school as therein provided.

Commitment of girls leading idle lives, etc. G. S. 75, §§ 6, 7. 1861, 200. 5 Allen, 509.

SECT. 26. If a boy or girl previously committed to the reform or industrial school is again brought before such court or magistrate upon any such complaint, the case may be examined and a warrant issued for a re-commitment of such boy or girl, without issuing the summons required by section twenty.

Second commitment of boys and girls. G. S. 75, § 10. G. S. 76, § 22.

SECT. 27. If a boy or girl found guilty before a police, district or municipal court or trial justice is not deemed a fit subject for the state reform or industrial school, such boy or girl shall be sentenced or bound over to appear before the superior court according to the usual course of criminal proceedings.

Boys and girls who are found guilty, and unfit for reform or industrial school, may be sentenced. G. S. 76, § 23. 1872, 68, § 5.

SECT. 28. When a boy is convicted by a judge of the probate court of any offence not punishable by a capital or infamous punishment, unless disposed of as provided in section twenty-two, he may be sentenced and committed to the reform school, or any institution established by authority of law for the reformation of juvenile offenders; or, in the discretion of the judge, to such other punishment as is provided for the offence.

Boys may be sentenced by judge of probate. 1870, 359, § 11. 108 Mass. 492. 127 Mass. 450.

SECT. 29. When a girl is convicted by a judge of the probate court of any offence not punishable by a capital or infamous punishment, unless disposed of as provided in section twenty-two, she may be sentenced and committed to the industrial school, in like manner and subject to the same provisions of law as now apply to girls committed to said school; or, in the discretion of the judge, to such other punishment as is provided for the offence.

Girls also. 1870, 359, § 12.

SECT. 30. A boy or girl ordered to be committed to the reform or industrial school, respectively, or sentenced as aforesaid, may appeal to the superior court, and the appeal shall be there entered, tried and determined in like manner and subject to like provisions as appeals from trial justices in criminal cases.

Appeal allowed. G. S. 75, § 12. G. S 76, § 24. 108 Mass. 492, 495.

SECT. 31. All warrants issued by judges of the probate court,

Return of war-

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rants for commitment of girls. 1861, 116.

trial justices or commissioners for the commitment of girls to the industrial school may be returned to the clerks of the superior court, and all fees thereon shall be allowed in the same manner that costs are allowed in criminal proceedings.

Service of summons. G. S. 75, § 8. 76, § 20. 1863, 139, § 3.

SECT. 32. Summonses to appear before a court or magistrate as provided in section twenty, unless in the case of a complaint against a boy service thereof is waived in writing, shall be served by a constable or police officer, by delivering the same personally to the party to whom it is addressed, or leaving it with some person of sufficient age at the place of residence or business of such party; and said constable or police officer shall immediately make return to the same court or magistrate of the time and manner of such service.

Fees of judges and officers. G. S. 75, § 11. G. S. 76, § 25.

SECT. 33. The fees and compensation allowed to judges of the probate court and commissioners under this chapter shall be the same as by law are allowed to trial justices; and all officers serving process shall be allowed the same fees as they are entitled to for serving process in criminal proceedings.

Boys convicted in supreme judicial or superior courts may be sentenced to reform school, when. G. S. 76, § 26. 1872, 68, § 5. 120 Mass. 388.

SECT. 34. When a boy between the ages of seven and seventeen years is convicted in the supreme judicial court or superior court of an offence which may be punished by imprisonment other than imprisonment for life, the court may sentence him to the reform school, or to such punishment as is otherwise provided by law. Before passing such sentence the court shall cause notice of the pendency of the case to be given to the mayor of the city or one of the selectmen of the town where the boy resided at the time of his arrest. The statement and certificate required by sections twenty-three and twenty-four shall be made and transmitted as therein provided in cases of commitments under this section.

Term of detention. G. S. 75, § 13. G. S. 76, § 27. 1864, 290.

SECT. 35. All boys and girls committed to the reform school or the industrial school shall be there kept, disciplined, instructed, employed and governed, under the direction of the trustees, until they arrive at the age of twenty-one years, or are bound out, or otherwise legally transferred or discharged. The discharge of a boy as reformed, or arriving at the age of twenty-one years, shall be a complete release from all penalties and disabilities created by the sentence.

Corporal punishment permitted in reform school only under rules, etc. 1877, 233.

SECT. 36. Corporal punishment shall only be permitted in the reform school under such rules and regulations and by such modes as shall be prescribed by the trustees. No such punishment shall be inflicted except by the direction of the superintendent or assistant superintendent in charge, to whom the offence shall be reported, and who shall designate the nature and extent of punishment to be inflicted. In every case of such punishment, a record of the

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offence and the mode and extent of the punishment shall be made and presented to the trustees at their next meeting.

Laws relating to reform school to apply to boys convicted in United States courts. 1866, 274.

SECT. 37. The provisions of this chapter respecting the state reform school for boys shall extend to boys committed by authority of the courts or magistrates of the United States.

Trustees may bind out girls and boys. G. S. 75, §§ 15, 20. G. S. 76, § 6.

SECT. 38. The trustees may bind out as an apprentice or servant any girl committed to their charge until she is eighteen years of age and any boy until he is twenty-one years of age, or for any less term; and the trustees, master or mistress, apprentice or servant, shall respectively have all the rights and privileges and be subject to all the duties set forth in chapter one hundred and forty-nine, in the same manner as if such binding or apprenticing were made by overseers of the poor. In binding out girls and boys, the trustees shall have scrupulous regard to the religious and moral character of those to whom they are to be bound, that they may secure to the girls and boys the benefit of a good example and wholesome instruction, and the best means of improvement in virtue and knowledge, and thus the opportunity of becoming intelligent, moral, useful and happy.

Indentures of girls to contain certain provisions. G. S. 75, § 15.

SECT. 39. The master to whom a girl is bound shall by the terms of the indenture be required to report to the trustees, as often as once in every six months, her conduct and behavior, and whether she is still living under his care, and if not, where she is.

of girls and boys to contain certain provisions. 1869, 302, § 1. 1879, 291, § 3.

SECT. 40. When any minor is bound out as an apprentice or servant by the trustees of the state almshouse, or the trustees of the state primary and reform schools, it shall be provided in the indenture that if at any time it appears to the trustees by whom the same is executed, or their successors in office, that the further continuance of the indenture will be prejudicial to the well-being of the apprentice or servant, they, or a majority of them, may annul the indenture by giving written notice to the master of their intention to cancel the same, stating their reasons therefor, and may forthwith remove the said apprentice or servant from the care and keeping of the said master.

Execution of indenture not to operate as discharged from confinement. 1869, 302, § 2.

SECT. 41. The execution of such conditional indenture shall not operate as a discharge of the minor from confinement under any sentence or order of commitment, and when any such indenture is cancelled, the trustees shall have the same power and authority in regard to the minor as before the indenture was made.

Indenture of apprenticeship of girls not to be assigned except, etc. May be cancelled. G. S. 75, § 16.

SECT. 42. A person receiving a girl as apprentice under the provisions of this chapter shall not assign or transfer the indenture of apprenticeship, nor let out her services for any period, without the consent in writing of the trustees. If the master for any cause desires to be relieved from the contract, the trustees,

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upon application, may in their discretion cancel the indenture and resume the charge and management of the girl, and shall have the same power and authority in regard to her as before the indenture was made.

Discharge of girl when master is guilty of cruelty, etc. G. S. 75, § 17.

SECT. 43. If a master is guilty of cruelty or misusage towards a girl so bound to service, or of any violation of the terms of the indenture, the girl or trustees may make complaint to a judge, trial justice or commissioner aforesaid, who shall summon the parties before him and examine into the complaint; and if it appears to be well founded, he shall by certificate under his hand discharge the girl from all obligations of future service, and restore her to the school, to be managed as before her indenture.

Assignment of indenture on death of master. G. S. 75, § 18.

SECT. 44. Upon the death of the master to whom a girl is so bound to service, his executor or administrator, with the consent of the girl in writing, acknowledged by her and approved by the trustees, may assign the indenture to some other person; which assignment shall transfer to and vest in the assignee all rights and subject him to all responsibilities of the original master.

Trustees may discharge girls. G. S. 75, § 14.

SECT. 45. The trustees shall discharge and return to her parents, guardian or protector any girl who, in their judgment, ought for any cause to be removed from the school. And in such case the trustees shall make an entry upon their records of her name, the party to whom she was returned, and the date when she left the school, together with a statement of the reasons for her discharge; a copy of which record signed by their secretary they shall forthwith transmit to the judge or commissioner by whom the girl was committed.

to act as guardians of girls discharged under twenty-one, or bound out. G. S. 75, § 19. 1863, 184, § 2.

SECT. 46. The trustees shall be the guardians of every girl so bound or held for service, and shall take care that the terms of the contract are faithfully fulfilled, and that she is properly treated; and they shall especially inquire into the treatment of every such girl and cause any grievance to be redressed. And in all cases where girls are discharged from the industrial school under twenty-one years of age and have no parents or guardian, the trustees shall act as guardians for said girls, with all the power and authority provided in chapter one hundred and thirty-nine.

Transfer of girls to reformatory prison: return. 1880, 208, § 3.

SECT. 47. On application of the trustees, the commissioners of prisons may cause any girl in the industrial school who was committed for a crime or misdemeanor to be transferred, with the mittimus upon which she was committed, to the reformatory prison for women, there to be held upon said mittimus until the term of sentence has expired, unless sooner discharged. The said commissioners may, upon application of the said trustees, cause the girl so transferred to be returned to the state industrial school, there to be held as if no such transfer had been made.

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Trustees may expend money given for houses, etc., for industrial school. Number not to exceed six. G. S. 75, § 26.

SECT. 48. The trustees may expend any money given for the purpose, in erecting houses or other buildings on the lands of the state at Lancaster for increasing the accommodation of the industrial school, plans therefor being first approved by the governor and council; but the whole number of such houses shall not exceed six.

Notice to be given to overseers, etc. 1876, 121, § 1.

SECT. 49. When a child, having a settlement in this commonwealth, is committed to the state primary school under the provisions of section twenty-two, the state board shall give written notice of such commitment to the overseers of the poor of the place of settlement; and the overseers, with the assent of the state board, may remove such child to the place of settlement, and the place of settlement shall pay one dollar a week, from the date of such notice, for the support of the child in the school, which sum shall be paid to or recovered by the treasurer of the commonwealth.

State board may discharge child from custody. 1876, 121, § 2.

SECT. 50. The state board may discharge from custody any child committed to its care under the provisions of section twenty-two.

Notice to be given to towns, when. 1876, 169, § 1.

SECT. 51. When a person having a settlement in this commonwealth is committed to the industrial or reform school, the trustees shall give written notice thereof to the overseers of the poor of the town or city of settlement, which town or city shall pay for his support in such school one dollar a week from the date of such notice, to be paid to the treasurer of the commonwealth, or recovered by him through the state board. Any sum so paid may be recovered by such town or city of any parent, kindred or guardian liable by law to maintain such person.

Record of commitments, etc., to be returned to superior court. 1863, 199.

SECT. 52. Every judge of the probate court or commissioner before whom any child is brought under the provisions of sections twenty and twenty-six shall make a brief record of his doings in the premises, and transmit the same, with all the papers in the case, to the superior court for criminal business in the county in which such proceedings are had; and the clerk thereof shall file and preserve the same in his office.

State board annually to visit all children indentured by state, etc. 1870, 359, § 2. 1871, 370, § 2. 1879, 291, § 3.

SECT. 53. The state board shall as often as once a year visit all children maintained wholly or in part by the state, or who have been indentured or placed in charge of a person by any state institution, board or officer of the commonwealth, or under any provision hereof, and all minor children supported at the expense of any city or town, and shall inquire into the condition of such children, and make such other investigations in relation thereto as it may think fit; and for this purpose it may have private interviews with such children at any time.

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State board may cancel indentures, or transfer child, when
1870, 359, § 3.
1871, 370, § 2.
1879, 291, § 3.

SECT. 54. When the state board is of opinion that a child so indentured or placed in charge of a person cannot, with advantage to the child, be longer so held, it may cancel the indenture or contract, by giving notice as provided in section forty, and return such child to the institution from which he was indentured or taken; or, on application of such institution, the state board may transfer him to any other institution maintained by the commonwealth for the support or reformation of children, or indenture him to some other person, or otherwise provide for his maintenance during minority, or for a less time. The cancellation of the indenture or contract shall not operate as a discharge of the minor under any sentence or order of commitment. No minor child supported at the expense of a city or town shall be removed therefrom without the consent of the overseers of the poor thereof.

to be notified before child is indentured, etc.
1870, 359, § 4.
1879, 291, § 3.

SECT. 55. No child shall be indentured, adopted or placed in charge of any person from a state institution until notice of an application therefor has been given to the state board, and its report in writing, made after investigation into the propriety thereof, has been filed with such institution. And all applications for the release or discharge of any children so indentured or placed in charge shall in like manner be given to the state board for its report.

to seek out suitable persons to adopt children, etc.
1870, 359, § 5.
1879, 291, § 3.

SECT. 56. The state board shall seek out suitable persons who are willing to adopt, take charge of, educate and maintain children arrested for offences, committed to a state institution, abandoned or neglected, and give notice thereof to the institutions, boards, officers or persons having authority so to dispose of said children.

Trustees may pay two hundred dollars annually to aid destitute girls.
1863, Res. 56.

SECT. 57. The trustees may annually pay, out of the sum appropriated for the current expenses of the industrial school, a sum not exceeding two hundred dollars in aiding destitute and deserving girls who have left the school and are out of employment.

[Chapter 127.]

AN ACT RELATING TO JUVENILE OFFENDERS.

Be it enacted, etc., as follows: —

SECTION 1. No court or magistrate shall commit any child under twelve years of age to a jail or house of correction, to the house of industry of the city of Boston, or to the state workhouse, in default of bail, for non-payment of fine or costs, or both, or for punishment for any offence not punishable by imprisonment for life, of which said child may have been adjudged guilty.

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Sect. 2. Whenever any child under twelve years of age is held by any court or magistrate for examination or trial, and said child is unable to furnish bail for such examination or trial, such court or magistrate shall commit said child to the custody of the state board of health, lunacy and charity; and said board is authorized to make all proper provisions for the safe-keeping of said child, and for his presence at the examination or trial for which he is held, at the time and place named in the mittimus.

Sect. 3. When a complaint is made to any court or magistrate of any offence, not punishable by imprisonment for life, committed by a child under twelve years of age, such court or magistrate, if an examination is deemed necessary, shall, in the first instance, issue a summons to said child, requiring his presence before such court or magistrate at the time and place named in said summons; and if said child fails then and there to appear as directed in said summons, such court or magistrate shall then issue a warrant for the arrest of said child.

Sect. 4. The provisions of this act shall not apply to either of the offences mentioned in section ten of chapter forty-eight of the Public Statutes.

[*Approved March 28, 1882.*

Opinion of the Attorney-General.

Attorney-General's Office,
Boston, Oct. 30, 1875.

Sir, — In answer to your inquiry, forwarded to me by his excellency the governor, of Oct. 20, I am of the opinion that: —

The only children who are under the control of the inspectors and superintendent of the state primary school are the pupils of that school.

The pupils of that school are those children who have been admitted by the board of state charities under Stat. 1866, chap. 209, sects. 4 and 5, or by the concurrent action of that board, and of his excellency the governor, under sects. 5 and 6 of the same act. These children can become pupils of the school for the sole purpose of being maintained, taught, exercised and employed (Stat. 1866, chap. 209, sect. 1). They can remain pupils of the school for no other purpose. It is made the duty of the superintendent, and of the other officers, to provide places in families for pupils when discharged from the school (Stat. 1866, chap. 209, sect. 7). The board of state charities alone can discharge a pupil from the school (sect. 5, same act). The inspectors and the board of state charities together may indenture pupils (Stat. 1866, chap. 209, sect. 8; Gen. Stats., chap. 71, sect. 33; Gen. Stats., chap. 111, sect. 4): consequently no children can be inden-

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tured or placed in a family without having been discharged by the board of state charities. A child so indentured and so placed passes from the control of both the board and of the inspectors.

In answer to your first question, I am of opinion that children so indentured, or so placed, remain in the charge and under the control of neither the board of state charities nor of the inspector.

In answer to your second question, I am of opinion that the power of the state board of state charities to discharge, under Stat. 1866, chap. 209, sect. 5, extends to pupils who are pupils of the state primary school, and under Stats. 1863, chap. 240, sect. 4, to all inmates of all charitable institutions and lunatic hospitals, and is confined to such pupils and to such inmates. Pupils who have been indentured or placed must have ceased to be members of either of these classes, and cannot be discharged from those positions by that board.

As to your third question, inasmuch as the discharge of the child from the school is an indispensable requisite of its having been indentured or placed, I am of opinion that that discharge cannot remit the duty of the visiting agent as to those children under Stat. 1870, chap. 359, sect. 2. The object of those visits will become manifest by a reference to Gen. Stats., chap. 111, sect. 9; and Stat. 1866, chap. 209, sect. 8, as to indentured children, and to Stat. 1866, sects. 4 and 5, as to children placed.

Yours respectfully,

CHAS. R. TRAIN.

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APPENDIX TO PART THIRD.

[The following Act, passed in 1882, imposes no duties on the State board, but will lead to the return of statistical information of much value concerning the private charities of Massachusetts, which are of great extent and variety.]

CHAPTER 217.

AN ACT PROVIDING FOR RETURNS OF PROPERTY HELD FOR LITERARY, BENEVOLENT, CHARITABLE OR SCIENTIFIC PURPOSES.

Be it enacted, etc., as follows:

SECTION 1. The notice to be given by assessors under the provisions of section thirty-eight of chapter eleven of the Public Statutes shall require all persons and corporations to bring in to the assessors, within a time therein specified, not later than the first day of July in the then current year, true lists of all real and personal estate held by such persons and corporations respectively for literary, benevolent, charitable or scientific purposes on the first day of May in said year, together with statements of the amounts of all receipts and expenditures by such persons or corporations for said purposes during the year next preceding said first day of May; such lists and statements to be in such detail as may be required by the tax commissioner: *provided*, that the assessors may accept any such list and statement after the time so specified if they shall be satisfied that there was good cause for the delay; but no list or statement shall be received after the first day of August in the then current year.

SECT. 2. If any person or corporation wilfully omits to bring in the list and statement of real and personal estate as herein required, the estate so held shall not be exempt from taxation in the then current year under the provisions of the third clause of section five of said chapter.

SECT. 3. The tax commissioner shall cause to be printed and distributed to assessors suitable printed forms for such lists and

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statements, and assessors shall forward to the tax commissioner all such lists and statements received by them with the statements required by section ninety of said chapter; and the tax commissioner shall cause to be prepared and submitted with his annual report to the general court such an abstract of the particulars contained in such lists and statements as he shall deem for the public interest.

SECT. 4. This act shall not apply to corporations making returns to the insurance commissioner under the provisions of section eleven of chapter one hundred fifteen of the Public Statutes.

SECT. 5. This act shall take effect upon its passage.

[*Approved May 12, 1882.*

BY-LAWS OF THE STATE BOARD OF HEALTH, LUNACY AND CHARITY.

(*Adopted June*, 1879; *Revised June*, 1880.)

1. The Board shall, on the nineteenth day of June, 1880, and annually thereafter on the first Saturday in July, beginning with the year 1881, elect by ballot a Chairman and Secretary, who shall each hold office until his successor shall have been chosen. In the absence or disability of the Chairman or Secretary, a Chairman or Secretary *pro tem.* may be chosen, as the Board may determine.

2. Regular meetings of the Board shall be held on the first Saturday of each month at such hour as the Board may designate, and, unless otherwise ordered, shall be holden at the office of the Board at the State House. Special meetings may be called when the Board or the Chairman may direct. Four members shall constitute a quorum for business.

3. There shall be appointed the following standing committees, to whom special duties shall be assigned: viz., a Committee on Health, of five members; a Committee on Lunacy, of four members; a Committee on Charities, of five members; and an Executive Committee, to consist of the chairmen of the standing committees. Except in such matters as shall require the direction or sanction of the whole Board, or unless the Board shall otherwise expressly vote, each Committee shall direct the business of its own department. The Executive Committee shall perform the functions of the Board in the intervals between its meetings, when immediate action is necessary; and action so taken shall be reported to the next meeting, and, if no objection is made, shall be recorded as the will of the Board.

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4. The officers of the Board shall be a Health Officer, an Inspector of Charities, a Superintendent of the Out-door Poor, and a Superintendent of the In-door Poor, all of whom shall hold office during the pleasure of the Board. They shall each receive an annual salary of twenty-five hundred dollars, together with a proper allowance for travelling and incidental expenses. They shall annually nominate to the Board suitable persons for clerical and other work, for whom, if approved, the Board shall assign a proper compensation. With the approval of the Division Committee, they may appoint persons temporarily when necessary.

5. The Secretary shall be present at the meetings of the Board, and keep a record of the doings at the same. The Health Officer shall discharge the duties of the Department of Health and of the Sanitary Supervision of the Institutions, and perform such other duties as the Board may assign him. He shall monthly report his doings to the Board, and annually in the month of September shall furnish a *résumé* of his work for the year.

6. The Superintendent of the Out-door Poor shall execute all the provisions of the laws relating to the sick State poor and those ill with contagious diseases, to the poor receiving temporary relief from the State, to foundlings and destitute infants, and to persons of Indian descent; and shall perform such other duties as the Board may from time to time assign him. He shall be under the immediate direction of the Committee on Charities, and report his doings to the Board monthly, and annually in the month of September shall furnish a *résumé* of his work for the year.

7. The Superintendent of the In-door Poor shall execute all the provisions of the laws relating to State pauper inmates of the State lunatic hospitals, almshouses, workhouse and reformatories; the laws relating to alien passengers, and to proceedings in bastardy. He shall be charged with the visitation of the children who may be the wards of the State; with the collection of all money due to the State for the support of inmates in the several State establishments; with the auditing of the bills of the several lunatic hospitals against the Commonwealth for the support of non-settled lunatic paupers; and shall perform such other service as the Board may from time to time require of him. He shall be under the immediate direction of the Committee on Charities, and monthly report his doings to the Board, and annually in the month of September shall furnish a *résumé* of his work for the year. He shall give a bond to the Treasurer of the Commonwealth in the sum of ten thousand dollars, with sufficient sureties, for the faithful performance of his duties.

8. The Inspector of Charities shall occupy the office at the State

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House. He shall have the charge of such statistical work, not otherwise assigned, as the Board shall direct, and shall, under the direction of the Committee on Lunacy, see that the statutes regulating the commitment and detention of lunatics are complied with. He shall exercise constant watchfulness over all the institutions which the Board is required to supervise. He shall monthly report to the Board his doings, and annually in the month of September shall furnish a *résumé* of his work for the year, and shall perform such other duties as the Board may from time to time require.

9. These By-Laws may be amended at any meeting of the Board during the present year[1] by the vote of a majority of the full Board, and after that time by a vote of two-thirds of the same at any meeting, after previous notice of the change that is desired in the same by any member.

[1] From June, 1879, to July 1, 1880.

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DEPARTMENT OF OUT-DOOR POOR.

INSTRUCTIONS TO OVERSEERS OF THE POOR, AND FORMS OF BILLS.

When a state pauper falls ill in a city or town, and calls for help, on the very day the same is granted one of the overseers should forward to the superintendent of the out-door poor a notice similar to the following: — (and for this reason *the statute allows no reimbursement whatsoever for aid granted before the day of notice.*)

To the Superintendent of Out-door Poor, 9 State House, Boston:

John Brown, a state pauper, is ill in this town [or city] and unable to be removed to a state almshouse. He has called for aid, which we have rendered, and for which we shall claim reimbursement from the State to the extent of the statute.

Yours respectfully,

JOHN WILLIAMS,

Overseer of the Poor of

Residence, No. 2 Oak Street.
Disease, Consumption.

Where there are no streets the overseer must designate the locality of the party's residence as distinctly as possible, that he may be visited without trouble or delay by some officer of the Board, if thought desirable. The disease must in all cases be specified.

When assistance has ceased, it is expedient to make up and send in the bill immediately, while the facts are yet fresh in memory.

And here follow two forms, one of which is to be used when the party is aided at his own home, or at the house of some friend; the other when he is removed to the local almshouse, or supported by agreement in a family at a given weekly rate. Overseers must give such a history as will show that the party, as far as they can possibly ascertain, has neither a *military* or *civil* settlement in the Commonwealth. They must also specify with accuracy the date of the commencement and close of the relief, as the law requires the reimbursement to be fixed at *a weekly* rate during its continuance.

Whenever relief is continued in any case beyond the 31st of December of any year, they must send a new notice for that case on Jan. 1 of the next year. When such notice is not renewed, the town has no claim against the State (see Gen. Stat., chap. 72, sect. 57), and when the residence and disease are omitted, the parties are not visited.

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THE SICK STATE POOR.

Form No. One.

COMMONWEALTH OF MASSACHUSETTS.

To City (or Town) of _____ Dr.

For support of _____

A State Pauper, too ill to be removed to a State Almshouse, from _____, 188 , to _____ 188 .

$.....

as follows:

1. Provisions and Supplies . . . . $.....
2. Clothing . . . .
3. Rent . . . .
4. Fuel . . . .
5. Medicine and Medical Attendance . . ..
6. Nursing . . . . $.....

HISTORY.

We hereby certify that the above bill is correct and statement true to our best knowledge.

_____ } *Overseers of Poor of* ____ ____

_____ } *Overseers of Poor of* ____ ____

_____ ss. _____, 188 .

Sworn to before me, this day,

_____ *Justice of the Peace.*

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Form No. Two.

COMMONWEALTH OF MASSACHUSETTS.

To City (or Town) of_____Dr.
For support of_____
A State Pauper too ill to be removed to a State Almshouse,
from_____188 to_____188

$.....

as follows:
Cash paid board in_____
_____weeks, at $.....per week $.....

Medical attendance . . . . . $.....
Nursing . . . .

HISTORY.

We hereby certify that the above bill is correct and statement true, to our best knowledge.

_____
_____ } *Overseers of Poor of*_____

_____ss._____188

Sworn to before me, this day,

_____*Justice of the Peace.*

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COMMONWEALTH OF MASSACHUSETTS.

To City (or Town) of_____ Dr.
For Burial Expenses of_____
An_____ State Pauper, $ .....

Said_____ died_____ 188 of_____
_____ and was buried_____ 188

HISTORY.

We hereby certify that the above bill is correct and statement true, to our best knowledge.

_____
_____
} *Overseers of Poor of*_____

_____ ss _____ 188

Sworn to before me, this day,

_____ *J. P.*

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TEMPORARY AID.

The following forms are for use under the Act of 1877, granting temporary aid to persons not sick. It must be remembered that the law grants this aid for *four weeks only* The notice is not renewable. Further aid is given by the State only in its State almshouse.

.....188

To the Superintendent of Out-door Poor, 9 State House, Boston.

We are now furnishing aid to the family of _____, and shall expect re-imbursement, in accordance with the provisions of chap. 183 of the Acts of the year 1877.

_____

For Overseers of the Poor.

Residence, where within the town.

Number of persons in family.

Amount per week.

Probable continuance.

Ought the person to be removed from the State?

Facts relative to settlement.

NOTE. — This form of notice must never be used for a sick person.

COMMONWEALTH OF MASSACHUSETTS.

To_____Dr.

For support of family of_____under the provisions of chap. 183, Acts of 1877 . . . . $.....

From_____to_____ . .....

Food . . . .

Fuel . . . .

Clothing . . . .

Transportation . . . .

I hereby certify that the above bill is correct, to my best knowledge and belief.

_____

For the Overseers of the Poor.

NOTE. — This form of bill must never be used for a sick person.

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FORMS FOR THE OUT-DOOR POOR,

WHEN ADMITTED TO STATE ALMSHOUSE, ETC.

[The following is the form used by the Mayors of cities and the Overseers of the Poor of towns for the commitment of State paupers to the State Almshouse at Tewksbury. The same form will answer for the commitment of foundlings and destitute children to the Massachusetts Infant Asylum, by slightly changing the phraseology, *e.g.:* "The Directors of the Massachusetts Infant Asylum will," etc., and by striking out the first, second, and third in the series of questions.

It is well to remember that the power of commitment to Tewksbury is vested solely in the above-named officers. This Board can transfer thither inmates of certain institutions; but it has no direct power to commit from the cities and towns.]

.....188

The Superintendent of State Almshouse, Tewksbury, will please admit the following person from.....

NAME.	AGE.	BIRTHPLACE.	REMARKS.
			Overseer of

General Remarks to contain Answers to the following Questions: —

1. If a foreigner, at what port did you land?
2. What steamer did you come in?
3. What year and month?
4. Names of parents?
5. Mother's maiden name?
6. Birthplace of parents?
7. Present residence of parents?
8. Former residence of parents?
9. Names and place of residence formerly, and now, of grandparents?
10. Number of years that the individual, his parents, or grandparents, have resided in the town or city from which sent?
11. Number of years they have paid taxes in said city or town?
12. If in the military service of the United States during the civil war, in what regiment and company did he serve?
13. If in the navy, when and where did he enlist?

N.B. — Overseers are reminded that under the Public Statutes, chap. 86, sects. 24, 25, and chap. 162 of the Acts of 1865, it is forbidden to send to either of the State Almhouses "any person who by reason of insanity would be dangerous if at large," or "any person infected with small-pox or other disease dangerous to the public health, or any other sick person whose health would be endangered by removal."

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ACT TO REGULATE IMMIGRATION.

[THE act recited below went into effect Aug. 3, 1882, since which time the Governor has designated the State Board of Health, Lunacy, and Charity as the board with which the Secretary of the Treasury may enter into contract to take charge of the local affairs of immigration in the ports of Massachusetts, and for other purposes mentioned in the act.]

AN ACT TO REGULATE IMMIGRATION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be levied, collected, and paid a duty of fifty cents for each and every passenger not a citizen of the United States who shall come by steam or sail vessel from a foreign port to any port within the United States. The said duty shall be paid to the collector of customs of the port to which such passenger shall come, or if there be no collector at such port, then to the collector of customs nearest thereto, by the master, owner, agent, or consignee of every such vessel, within twenty-four hours after the entry thereof into such port. The money thus collected shall be paid into the United States Treasury, and shall constitute a fund to be called the immigrant fund, and shall be used, under the direction of the Secretary of the Treasury, to defray the expense of regulating immigration under this act, and for the care of immigrants arriving in the United States, for the relief of such as are in distress, and for the general purposes and expenses of carrying this act into effect. The duty imposed by this section shall be a lien upon the vessels which shall bring such passengers into the United States, and shall be a debt in favor of the United States against the owner or owners of such vessels; and the payment of such duty may be enforced by any legal or equitable remedy: *provided*, that no greater sum shall be expended for the purposes hereinbefore mentioned at any port than shall have been collected at such port.

SECT. 2. That the Secretary of the Treasury is hereby charged with the duty of executing the provisions of this act and with supervision over the business of immigration to the United States,

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and for that purpose he shall have power to enter into contracts with such State commission, board, or officers as may be designated for that purpose by the governor of any State to take charge of the local affairs of immigration in the ports within said State, and to provide for the support and relief of such immigrants therein landing as may fall into distress or need public aid, under the rules and regulations to be prescribed by said Secretary; and it shall be the duty of such State commission, board, or officers so designated to examine into the condition of passengers arriving at the ports within such State in any ship or vessel, and for that purpose all or any of such commissioners or officers, or such other person or persons as they shall appoint, shall be authorized to go on board of and through any such ship or vessel; and if on such examination there shall be found among such passengers any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge, they shall report the same in writing to the collector of such port, and such persons shall not be permitted to land.

SECT. 3. That the Secretary of the Treasury shall establish such regulations and rules, and issue from time to time such instructions, not inconsistent with law, as he shall deem best calculated to protect the United States and immigrants into the United States from fraud and loss, and for carrying out the provisions of this act and the immigration laws of the United States; and he shall prescribe all forms of bonds, entries, and other papers to be used under and in the enforcement of the various provisions of this act.

SECT. 4. That all foreign convicts, except those convicted of political offences, upon arrival shall be sent back to the nations to which they belong and from whence they came. The Secretary of the Treasury may designate the State board of charities of any State in which such board shall exist by law, or any commission in any State, or any person or persons in any State, whose duty it shall be to execute the provisions of this section without compensation. The Secretary of the Treasury shall prescribe regulations for the return of the aforesaid persons to the countries from whence they came, and shall furnish instructions to the board, commission, or persons charged with the execution of the provisions of this section as to the mode of procedure in respect thereto, and may change such instructions from time to time. The expense of such return of the aforesaid persons not permitted to land shall be borne by the owners of the vessels in which they came.

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INSTITUTIONS UNDER THE SUPERVISION OF THE BOARD.

State Lunatic Hospital, Worcester.

Superintendent, *John G. Park, M.D*, Worcester.

Trustees . . { *Thomas H. Gage, M.D.*, Worcester.
Francis H. Dewey, Worcester.
John F. Moors, Greenfield.
Robert W. Hooper, M.D., Boston.
Rufus D. Woods, Enfield.

Superintendent of the Chronic Asylum, *H. M. Quinby, M.D.* Worcester.

State Lunatic Hospital, Taunton.

Superintendent, *J. P. Brown, M.D.*, Taunton.

Trustees . . { *Samuel L. Crocker*, Taunton.
George Howland, jun., New Bedford.
William C. Lovering, Taunton.
Simeon Borden, Fall River.
Le Baron Russell, M.D., Boston.

State Lunatic Hospital, Northampton.

Superintendent, *Pliny Earle, M.D.*, Northampton.

Trustees . . { *Adams C. Deane, M.D*, Greenfield.
Henry W. Taft, Pittsfield.
Lyman D. James, Williamsburg.
William M. Gaylord, Northampton.
Silas M. Smith, Northampton.

State Lunatic Hospital, Danvers.

Superintendent, *William B. Goldsmith, M.D.*, Danvers.

Trustees . . { *Harriet R. Lee*, Salem.
Daniel S. Richardson, Lowell.
Charles P. Preston, Danvers.
Charles F. Folsom, M.D., Boston.
Samuel W. Hopkinson, Bradford.

State Almshouse, Tewksbury.

Superintendent, *Thomas J. Marsh*, Tewksbury.

Trustees . . { *F. H. Nourse*, Winchester.
George P. Elliot, Billerica.
W. R. Spaulding, Lawrence.
Ellen S. S. Hammond, Boston.
Emily F. Pope, M.D., Boston.

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STATE WORKHOUSE, BRIDGEWATER.

Superintendent, *N. Leonard, jun.*, Titicut.

Trustees . . *Joshua E. Crane*, Bridgewater.
J. White Belcher, Randolph.
Weaver Osborn, Fall River.
Catherine P. Lothrop, Taunton.
Annie Fields, Boston.

STATE PRIMARY AND REFORM SCHOOLS.

Trustees of the State Primary and Reform Schools. *Anne B. Richardson*, Lowell.
George W. Johnson, Brookfield.
Samuel R. Heywood, Worcester.
Elizabeth C. Putnam, Boston.
Milo Hildreth, Northborough.
Thomas Dwight, M.D., Boston.
Lyman Belknap, Westborough.

STATE PRIMARY SCHOOL, MONSON.

Superintendent, *Gardiner Tufts*, Palmer.

STATE REFORM SCHOOL, WESTBOROUGH.

Superintendent, *Joseph A. Allen*, Westborough.

STATE INDUSTRIAL SCHOOL, LANCASTER.

Superintendent, *N. Porter Brown*, Lancaster.

MASSACHUSETTS SCHOOL FOR IDIOTIC AND FEEBLE-MINDED YOUTH, SOUTH BOSTON.

Superintendent, *Edward Jarvis, M.D.*
Ass't Superintendent, *George G. Tarbell, M.D.*, Boston.

Trustees . . *Lewis Allen*, Peabody.
John Cummings, Woburn.
J. S. Damrell, Boston.
Samuel Eliot, Boston.
Samuel A. Green, M.D., Boston.
Charles D. Homans, M.D., Boston.
Edward Jarvis, M.D., Boston.
W. Brandt Storer, Cambridge.
John D. Washburn, Worcester.
W. W. Swan, Boston.
Stephen Salisbury, jun., Worcester.
Benjamin F. Spinney, Lynn.

MASSACHUSETTS INFANT ASYLUM, BROOKLINE.

President . . *Samuel Cabot, M.D.*, Boston.
Treasurer . . *Edward S. Philbrick*, Brookline.
Matron . . . *Miss Elizabeth Clapp*, Brookline.

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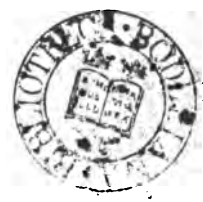

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